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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:
12 **ERIC J. BERESFORD**
13 **3587 Hwy. 9**
14 **Freehold, NJ 07728**
15 **Original Pharmacist License No. RPH 49692**
16 Respondent.

Case No. 3741

A C C U S A T I O N

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 26, 1997, the Board of Pharmacy issued Original Pharmacist
22 License Number RPH 49692 to Eric J. Beresford (Respondent). The Original Pharmacist License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 February 28, 2011, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
2 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
3 disciplinary action during the period within which the license may be renewed, restored, reissued
4 or reinstated.

5 5. Section 4300 of the Code states:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board,
8 whose default has been entered or whose case has been heard by the board and found
 guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one
12 year.

13 (4) Revoking his or her license.

14 (5) Taking any other action in relation to disciplining him or her as the
 board in its discretion may deem proper.

15 6. Section 482 of the Code states:

16 Each board under the provisions of this code shall develop criteria to evaluate
17 the rehabilitation of a person when:

18 ...

19 (b) Considering suspension or revocation of a license under Section 490.

20 Each board shall take into account all competent evidence of rehabilitation
21 furnished by the applicant or licensee.

22 **STATUTORY PROVISIONS**

23 7. Section 490 of the Code states:

24 A board may suspend or revoke a license on the ground that the licensee has
25 been convicted of a crime, if the crime is substantially related to the qualifications,
26 functions, or duties of the business or profession for which the license was issued. A
27 conviction within the meaning of this section means a plea or verdict of guilty or a
28 conviction following a plea of nolo contendere. Any action which a board is
 permitted to take following the establishment of a conviction may be taken when the
 time for appeal has elapsed, or the judgment of conviction has been affirmed on
 appeal, or when an order granting probation is made suspending the imposition of

1 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
2 the Penal Code.

3 8. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding conducted by a
5 board within the department pursuant to law to deny an application for a license or to
6 suspend or revoke a license or otherwise take disciplinary action against a person
7 who holds a license, upon the ground that the applicant or the licensee has been
8 convicted of a crime substantially related to the qualifications, functions, and duties
9 of the licensee in question, the record of conviction of the crime shall be conclusive
10 evidence of the fact that the conviction occurred, but only of that fact, and the board
11 may inquire into the circumstances surrounding the commission of the crime in order
12 to fix the degree of discipline or to determine if the conviction is substantially related
13 to the qualifications, functions, and duties of the licensee in question.

14 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
15 'registration.'

16 9. Section 4301 of the Code states:

17 The board shall take action against any holder of a license who is guilty of
18 unprofessional conduct or whose license has been procured by fraud or
19 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
20 not limited to, any of the following:

21 ...

22 (h) The administering to oneself, of any controlled substance, or the use of any
23 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
24 dangerous or injurious to oneself, to a person holding a license under this chapter, or
25 to any other person or to the public, or to the extent that the use impairs the ability of
26 the person to conduct with safety to the public the practice authorized by the license.

27 ...

28 (l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. . . . In all other cases, the
record of conviction shall be conclusive evidence only of the fact that the conviction
occurred. The board may inquire into the circumstances surrounding the commission
of the crime, in order to fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction is
of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. . . .

....

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1770, states:

For the purpose of denial, suspension, or revocation of a personal or facility
license pursuant to Division 1.5 (commencing with Section 475) of the Business and
Professions Code, a crime or act shall be considered substantially related to the
qualifications, functions or duties of a licensee or registrant if to a substantial degree
it evidences present or potential unfitness of a licensee or registrant to perform the

1 functions authorized by his license or registration in a manner consistent with the
2 public health, safety, or welfare.

3 11. California Code of Regulations, title 16, section 1769, subdivision b, states:

4 When considering the suspension or revocation of a facility or personal license
5 on the ground that the licensee or the registrant has been convicted of a crime, the
6 board in evaluating the rehabilitation of such person and his present eligibility for a
7 license will consider the following:

8 (1) The nature and severity of the act(s) or offense(s).

9 (2) Total criminal record.

10 (3) Time that has elapsed since the commission of the act(s) or offense(s).

11 (4) Whether the licensee has complied with all terms of parole, probation, restitution,
12 or any other sanctions lawfully imposed against the licensee.

13 (5) Evidence, if any, of rehabilitation submitted by the licensee.

14 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **FACTS**

19 13. On or about March 1, 2010, in a criminal proceeding entitled *People of the State of*
20 *California v. Eric J. Beresford*, in the Superior Court, County of Orange, Harbor Justice Center,
21 Newport Beach Facility, Case Number 09HM06589, Respondent was convicted on his plea of
22 guilty to violating Vehicle Code section 23152 subdivision (b) (driving with a blood alcohol level
23 above .08%), a misdemeanor.

24 14. Respondent was sentenced to three (3) years summary probation, and ordered to
25 complete the First Offender Alcohol Program, appear before the Mothers Against Drunk Driving
26 Victims' Impact Panel, pay restitution to the victim and pay fines in the amount of \$390.00.

27 15. The circumstances of the crime are that on or about July 5, 2009, at 1:50 a.m.
28 Respondent was observed colliding with the concrete center divider at the MacArthur off-ramp at
SR-73, and then driving away. Respondent was stopped approximately 1 1/2 miles from the
scene of the accident. When a police officer contacted Respondent sitting behind the wheel of the
car, Respondent had a strong odor of alcohol on his breath and his speech was slurred. His eyes

1 were red and watery. Respondent admitted to the officer that he had taken Cibalta, Ambien,
2 Xanax and Provigil earlier in the day. Respondent was administered field sobriety tests which he
3 failed to complete in a satisfactory manner. Following administration of a breath test his blood
4 alcohol level was .13%.

5 **FIRST CAUSE FOR DISCIPLINE**

6 (March 1, 2010 Criminal Conviction for Driving Under the Influence of Alcohol on July 5, 2009)

7 16. Respondent is subject to disciplinary action under Code sections 490, and 4301,
8 subdivision (l), in that he was convicted of a crime substantially related to the duties, functions
9 and qualifications as a pharmacist, as described in paragraphs 14 through 16 above.

10 **SECOND CAUSE FOR DISCIPLINE**

11 (Use of Alcohol in a Dangerous Manner)

12 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
13 in that he ingested a sufficient amount of alcohol to impair his ability to drive safely, and then
14 proceeded to drive a car where he was involved in a hit and run accident, thereby placing himself
15 and others in danger, as described in paragraphs 14 through 16 above.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18 and that following the hearing, the Board of Pharmacy issue a decision:

19 1. Revoking or suspending Original Pharmacist License Number RPH 49692, issued to
20 Eric J. Beresford.

21 2. Ordering Eric J. Beresford to pay the Board of Pharmacy the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3;

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25 ///

26 ///

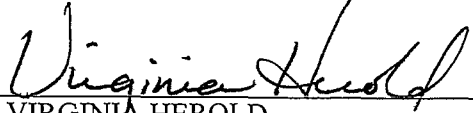
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/4/10



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant