

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 **In the Matter of the Accusation Against:**

Case No. 3803

13 **STEVEN R. MONTAG**
10802 Camino Ruiz H
14 San Diego, CA 92126

ACCUSATION

15 **Pharmacist License No. RPH 59622**

16 **Respondent.**

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about June 12, 2007, the Board of Pharmacy issued Original Pharmacist
23 License No. RPH 59622 to Steven R. Montag (Respondent). The Original Pharmacist License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2011, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

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

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

9 5. Section 4300, subdivision (a) of the Code states "Every license issued may be
10 suspended or revoked."

11 STATUTORY PROVISIONS

12 6. Section 482(b) provides, in pertinent part, that when considering the suspension or
13 revocation of a license under Section 490, each board shall take into account all competent
14 evidence of rehabilitation furnished by the applicant or licensee.

15 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
16 revoke a license on the ground that the licensee has been convicted of a crime substantially
17 related to the qualifications, functions, or duties of the business or profession for which the
18 license was issued.

19 8. Section 493 of the Code states:

20 Notwithstanding any other provision of law, in a proceeding conducted by a
21 board within the department pursuant to law to deny an application for a license or to
22 suspend or revoke a license or otherwise take disciplinary action against a person who
23 holds a license, upon the ground that the applicant or the licensee has been convicted
24 of a crime substantially related to the qualifications, functions, and duties of the
25 licensee in question, the record of conviction of the crime shall be conclusive
26 evidence of the fact that the conviction occurred, but only of that fact, and the board
27 may inquire into the circumstances surrounding the commission of the crime in order
28 to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Section 4301 of the Code states:

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

....

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

....

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. 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. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

///
///
///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

.....

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(April 26, 2010 Criminal Conviction for Driving With Blood Alcohol of 0.08% or More on June 8, 2009)

13. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

1 a. On or about April 26, 2010, in a criminal proceeding entitled *People of the State of*
2 *California v. Steven R. Montag*, San Diego County Superior Court, case number M083760,
3 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152,
4 subdivision (b) (driving with a blood alcohol content of 0.08% or more), a misdemeanor.

5 b. The circumstances surrounding the conviction are that on or about June 8, 2009,
6 California Highway Patrol officers stopped Respondent's vehicle for possible drunk driving. As
7 Respondent exited his vehicle, officers smelled a strong odor of an alcoholic beverage on his
8 person. Respondent walked to the front of his car and officers noticed Respondent was slow and
9 unsteady on his feet and was very lethargic in his movements. Upon close contact, officers
10 observed his eyes to be red, watery and bloodshot and could smell a strong odor of an alcoholic
11 beverage emitting from his breath when he spoke. Officers asked Respondent how much he had
12 had to drink, and he responded, "One beer and one shot." Officers asked if Respondent had
13 anything to drink earlier, and Respondent told officers he had had 1-2 beers around 4:30 p.m., but
14 started to say 2-3 beers and stopped himself. Officers observed that Respondent's speech was
15 very slow and mumbled. Officers requested that Respondent perform field sobriety tests and he
16 showed signs of impairment in performing them and then refused to perform a preliminary
17 alcohol screening test. Respondent was placed under arrest for driving a motor vehicle while
18 intoxicated and transported to the San Diego County Jail where he elected to take a blood test.
19 Respondent's BAC was analyzed at 0.15%.

20 c. As a result of the conviction Respondent was placed on five years summary
21 probation. Respondent was ordered to pay various fines and fees, ordered to enroll in and serve
22 four days in the Public Service Program consecutive to Case Number M093222 (see Second
23 Cause for Discipline), enroll in and complete the MAAD program concurrent with Case Number
24 093222, and enroll in and complete a first offender program. Respondent was further ordered to
25 not drive with any measurable amount of alcohol in his system.

26 ///

27 ///

28

1 SECOND CAUSE FOR DISCIPLINE

2 **(April 26, 2010 Criminal Conviction for Driving With Blood Alcohol of 0.08% or More and**
3 **Driving on Suspended License on October 4, 2009)**

4 14. Respondent has subjected his license to discipline under sections 490 and 4301,
5 subdivision (I) of the Code in that he was convicted of a crime that is substantially related to the
6 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

7 a. On or about April 26, 2010, in a criminal proceeding entitled *People of the State of*
8 *California v. Steven R. Montag*, San Diego County Superior Court, case number M093222,
9 Respondent was convicted on his plea of guilty to violating Vehicle Code sections 23152,
10 subdivision (b) (driving with a blood alcohol content of 0.08% or more), and 14601.5(a) (driving
11 with a suspended license), misdemeanors.

12 b. The circumstances surrounding the conviction are that on or about October 4, 2009,
13 San Diego Police Officers officers spotted Respondent's car making a fast right turn without
14 signaling onto Robinson Avenue in San Diego, CA. Officers stopped Respondent's vehicle.
15 Officers observed Respondent with signs of being under the influence of alcohol and smelled the
16 odor of an alcoholic beverage emitting from Respondent's breath. Officers asked Respondent
17 how much he had had to drink, and he told officers, "Just a few." When asked for his driver's
18 license, Respondent did not respond and just stared at officers. Officers ordered Respondent out
19 of the vehicle and Respondent was slow in getting out of the vehicle and swayed once standing.
20 Respondent's speech was slurred. Officers asked Respondent once again for his driver's license,
21 and Respondent responded, "It's suspended," but refused to say why. Respondent was placed
22 under arrest for drunk driving, at which time Respondent repeatedly told officers, "Just kill me,
23 just kill me." Respondent provided a blood sample and his BAC was analyzed at .15%.

24 c. As a result of the conviction, the court suspended imposition of sentence for five
25 years and Respondent was placed on five years summary probation. Respondent was ordered to
26 pay various fees and fines, ordered to enroll in and serve four days in the Public Service Program
27 consecutive to Case Number M083760 (see First Cause for Discipline), enroll in and complete the
28 MAAD program concurrent with Case Number M093760, and to complete a first offender

1 program. Respondent was further ordered to not drive with any measurable amount of alcohol in
2 his system.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

5 15. Respondent has subjected his license to disciplinary action under section 4301,
6 subdivision (h) of the Code in that on or about June 8, 2009 and October 4, 2009, Respondent
7 drove a vehicle while under the influence of an alcoholic beverage, which posed a serious risk of
8 injury and/or death to himself and to the public, as detailed in paragraphs 13 and 14, above, and
9 which are incorporated here by reference.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

12 16. Respondent has subjected his license to disciplinary action under section 4301,
13 subdivision (k) of the Code in that on or about April 26, 2010, Respondent was convicted in two
14 separate cases on charges involving the consumption of alcoholic beverages, as detailed in
15 paragraphs 13 and 14, above, which are incorporated here by reference.

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 59622, issued to
20 Steven R. Montag;

21 2. Ordering Steven R. Montag 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;

24 ///

25 ///

26 ///

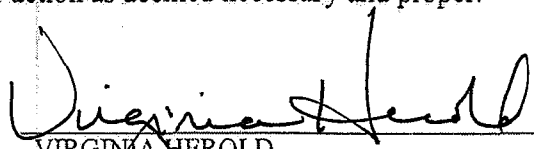
27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED: 1/4/11


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

SD2010702094
70397756.docx