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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. 3832

13 **ALEX MACDONALD**
14 **3408 Cameo Drive**
Oceanside, CA 92056

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 86095**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 2, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 86095 to Alex MacDonald (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on November 30, 2011, unless renewed.

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(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.

....

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

(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.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

....

9. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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1 (b) Any device that bears the statement: "Caution: federal law restricts this
2 device to sale by or on the order of a _____," "Rx only," or words of similar
3 import, the blank to be filled in with the designation of the practitioner licensed to use
4 or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
8 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

12 REGULATORY PROVISIONS

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

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

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

20 (2) Total criminal record.

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

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

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

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

26 For the purpose of denial, suspension, or revocation of a personal or facility
27 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
28 Professions Code, a crime or act shall be considered substantially related to the
29 qualifications, functions or duties of a licensee or registrant if to a substantial degree
30 it evidences present or potential unfitness of a licensee or registrant to perform the
31 functions authorized by his license or registration in a manner consistent with the
32 public health, safety, or welfare.

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1 COSTS

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

6 DRUG

7 14. Cocaine is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &
9 Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(May 4, 2010 Criminal Conviction for DUI/Controlled Substance on April 29, 2010)**

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

15 a. On or about May 4, 2010, in a criminal proceeding entitled *People of the State*
16 *of California v. Alexander MacDonald*, San Diego County Superior Court (North County
17 Division), case number CN276309, Respondent was convicted on his plea of guilty to violating
18 Vehicle Code section 23152, subdivision (a), driving under the influence of a controlled
19 substance, to wit, cocaine, a misdemeanor.

20 b. As a result of the conviction, on or about May 4, 2010, Respondent was
21 sentenced to serve five years summary probation, ordered to enroll in and attend a First
22 Conviction Program and MADD victim impact panel, pay fines, fees, and restitution in the
23 amount of \$1,952, and comply with standard alcohol conditions pursuant to Vehicle Code section
24 23600 (which includes controlled substances).

25 c. The facts that led to the conviction were that on or about the evening of April
26 29, 2010, an officer of the Oceanside Police Department driving a marked police vehicle
27 observed Respondent drive through a parking lot at a high rate of speed, exit going in the wrong
28 direction, then proceed onto a narrow two-lane roadway still driving at an unsafe speed.

1 Respondent was stopped by the officer and questioned. As Respondent was looking for his
2 vehicle registration, the officer noticed a 3-inch cut straw covered in white residue in the door
3 handle pocket of the vehicle. The officer retrieved the straw through the open window and
4 showed it to Respondent, who denied knowing anything about it. Respondent appeared nervous
5 and unable to sit still, he had rapid speech and dilated pupils. The officer conducted a search of
6 Respondent's vehicle and located a small glass vial containing white residue and another snorting
7 straw with white residue in the driver's side change compartment. Respondent finally admitted to
8 the officer that he used to abuse Oxycontin but had gone into rehab and was on methadone and
9 Alprazolam. Respondent said that he recently started snorting cocaine and directed the officer to
10 other drug paraphernalia in the vehicle including a small piece of glass used for cutting up the
11 cocaine, two additional plastic vials containing residue, a digital scale, two small used baggies, a
12 plastic pill cutting device with residue, more snorting straws, and a ball of crumpled foil
13 Respondent said he formerly used to smoke "Oxy." Respondent agreed to submit to a series of
14 field sobriety tests which showed impairment; Respondent's pulse was approximately 132 beats
15 per minute, his pupils showed slow reaction to light, he had eyelid tremors, and a visible
16 reddening of the interior right nostril. Respondent was placed under arrest for driving under the
17 influence of a controlled substance, being under the influence of a controlled substance, and
18 possession of controlled substance paraphernalia. A razor blade was found in Respondent's
19 wallet during booking.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct - Use of a Controlled Substance)**

22 16. Respondent has subjected his registration to disciplinary action under section 4301,
23 subdivision (h) of the Code in that on or about April 29, 2010, Respondent administered to
24 himself a controlled substance, cocaine, as detailed in paragraph 15, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violation of State Laws Regulating Controlled Substances)**

3 17. Respondent has subjected his registration to disciplinary action under section 4301,
4 subdivision (j) of the Code in that on or about April 29, 2010, as detailed in paragraph 15, above,
5 Respondent was under the influence of a controlled substance (cocaine), which violated Health
6 and Safety Code section 11550, subdivision (a); and he possessed controlled substance
7 paraphernalia, which violated Health and Safety Code section 11364.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Furnishing a Dangerous Drug)**

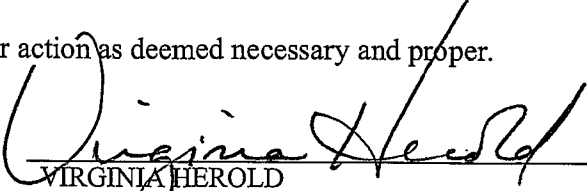
10 18. Respondent has subjected his registration to disciplinary action under sections 4301,
11 subdivision (o) and 4059 of the Code in that on or about April 29, 2010, as detailed in paragraph
12 15, above, Respondent furnished to himself and was under the influence of cocaine.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86095,
17 issued to Alex MacDonald;
- 18 2. Ordering Alex MacDonald to pay the Board of Pharmacy the reasonable costs of the
19 investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.

22 DATED: 2/23/11

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24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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