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

11 In the Matter of the Accusation Against:

Case No. 3834

12 **ASATUR POGOSYAN**  
13 **8460 Glencrest Drive**  
14 **Sun Valley, CA 91352**

**ACCUSATION**

15 **Pharmacy Technician Registration**  
16 **No. TCH 42825**

Respondent.

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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 May 14, 2002, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 42825 to Asatur Pogosyan (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 February 29, 2012, unless renewed.

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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 4300(a) of the Code states that “[e]very license issued may be suspended or  
6 revoked.”

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

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

15 (a) Considering the denial of a license by the board under Section 480; or

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

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

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

23 8. Section 492 of the Code states:

24 Notwithstanding any other provision of law, successful completion of any  
25 diversion program under the Penal Code, or successful completion of an alcohol and  
26 drug problem assessment program under Article 5 (commencing with section  
27 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any  
28 agency established under Division 2 ([Healing Arts] commencing with Section 500)  
of this code, or any initiative act referred to in that division, from taking disciplinary  
action against a licensee or from denying a license for professional misconduct,  
notwithstanding that evidence of that misconduct may be recorded in a record  
pertaining to an arrest.

1 This section shall not be construed to apply to any drug diversion program  
2 operated by any agency established under Division 2 (commencing with Section 500)  
3 of this code, or any initiative act referred to in that division.

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13 9. Section 493 of the Code states:

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

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

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28 10. 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud,  
deceit, or corruption, whether the act is committed in the course of relations as a  
licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

(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.

....

(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

1 fix the degree of discipline or, in the case of a conviction not involving controlled  
2 substances or dangerous drugs, to determine if the conviction is of an offense  
3 substantially related to the qualifications, functions, and duties of a licensee under this  
4 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
5 contendere is deemed to be a conviction within the meaning of this provision. The  
6 board may take action when the time for appeal has elapsed, or the judgment of  
7 conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under  
9 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of  
10 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
11 dismissing the accusation, information or indictment.

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

18 11. Title 16, California Code of Regulations, section 1769, states:

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

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

25 (2) Total criminal record.

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

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

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

12. Title 16, California Code of Regulations, 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.

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**COST RECOVERY**

13. 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.

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**FIRST CAUSE FOR DISCIPLINE**

**(June 16, 2005 Criminal Conviction for Driving While License Suspended)**

14. Respondent is subject to disciplinary action under sections 490 and 4301(I) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties and functions of a pharmacy technician. The circumstances are as follows:

15. On or about June 15, 2005, in a criminal proceeding entitled *The People of the State of California v. Asatur Pogosyan*, in Los Angeles Superior Court, Case No. 4GL03346, Respondent was convicted on his plea of nolo contendere for violating Vehicle Code section 12500(A), (Driving While License Suspended)), a misdemeanor. As a result of the plea, Count 1 (Driving With Knowledge of Suspension, Revocation, or Restriction of Driving Privilege) was dismissed.

16. As a result of the conviction, Respondent was ordered to pay fines and fees totaling \$190. On June 15, 2005, a \$26,000 bench warrant was recalled.

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**SECOND CAUSE FOR DISCIPLINE**

**(July 7, 2007 Criminal Conviction for Driving With Blood Alcohol Level of 0.08% Or More)**

17. Respondent is subject to disciplinary action under sections 490 and 4301(I) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties and functions of a pharmacy technician. The circumstances are as follows:

18. On or about July 7, 2007, in a criminal proceeding entitled *The People of the State of California v. Asatur Pogosyan*, in Los Angeles Superior Court, Case No. 702934, Respondent was convicted on his plea of guilty, of violating Vehicle Code section 23152(b) (Driving With Blood Alcohol Level of 0.08% or More), a misdemeanor.

1 19. The circumstances are that on or about April 24, 2007, respondent was arrested for  
2 driving with a blood alcohol level of 0.08% or more.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(May 10, 2010 Criminal Conviction for Driving With Blood Alcohol of 0.08% or More on**  
5 **March 10, 2010)**

6 20. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
7 Code in that he was convicted of a crime that is substantially related to the qualifications, duties  
8 and functions of a pharmacy technician. The circumstances are as follows:

9 21. On or about May 10, 2010, in a criminal proceeding entitled *The People of the State*  
10 *of California v. Asatur Pogosyan*, in Los Angeles Superior Court, Case No. OGN01855,  
11 Respondent was convicted on his plea of nolo contendere for violating Vehicle Code section  
12 23152(b), (Driving Without a Blood Alcohol Level of 0.08% or More), a misdemeanor. As a  
13 result of the plea, Count 1 (Driving under the Influence of Alcohol) was dismissed.

14 22. As a result of the conviction, Respondent was placed on summary probation for four  
15 (4) years and ordered, among other things, to serve 30 days in the Los Angeles County Jail, pay  
16 various fines and fees, enroll in and successfully complete an 18-month licensed second-offender  
17 alcohol and other drug education counseling program, make restitution to the victim, not operate  
18 a motor vehicle within twelve hours of having consumed any alcoholic beverages, not refuse to  
19 take a chemical/breath test for alcohol or drug consumption when requested, and obey all laws.

20 23. On July 6, 2010, Respondent's probation was revoked for having received a second  
21 conviction for violating Vehicle Code section 12500(A) (Driving While License Suspended -- see  
22 Cause for Discipline 2.) Respondent's probation was reinstated and allowed to continue on  
23 probation on the same terms and conditions with the following modifications: Perform five (5)  
24 days of CalTrans and ordered to serve 30 days in the county jail (previously ordered stayed)

25 24. The facts that led to the conviction are that on or about March 10, 2010, Glendale  
26 Police Department officers responded to a call of an accident involving multiple parked vehicles

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1 at Wilson Avenue East of Adams in the City of Glendale, CA. Officers were informed that the  
2 driver of vehicle #1 was possibly under the influence of alcohol.

3 25. Upon arrival, officers made contact with Respondent and observed Respondent sitting  
4 on the curb. Respondent's speech was slurred and officers could smell an odor of alcohol  
5 emitting from his breath and person. When officers asked Respondent to stand up, Respondent  
6 attempted to stand up but began to stumble. Officers assisted Respondent to his feet and noticed  
7 his eyes were bloodshot and watery. Officers asked Respondent what had happened, and  
8 Respondent replied "I don't know." Officers performed a field sobriety test on Respondent which  
9 he failed. Respondent told officers that he had two 12-ounce beers in approximately 30 minutes.  
10 Respondent refused a breath test. Based on the results of the field sobriety test, the objective  
11 symptoms of alcohol intoxication that Respondent displayed, and his admission of consuming  
12 alcohol that evening, officers arrested Respondent for driving under the influence of alcohol and  
13 for driving with a blood alcohol level of 0.08% or more. Officers determined Respondent hit  
14 three parked cars with his vehicle.

#### 15 **FOURTH CAUSE FOR DISCIPLINE**

##### 16 **(July 6, 2010 Criminal Conviction for Driving a Motor Vehicle While License Suspended)**

17 26. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
18 Code in that he was convicted of a crime that is substantially related to the qualifications, duties  
19 and functions of a pharmacy technician. The circumstances are as follows:

20 27. On or about June 16, 2010, in a criminal proceeding entitled *The People of the State*  
21 *of California v. Asatur Pogosyan*, in Los Angeles Superior Court, Case No. 0GN02629,  
22 Respondent was convicted on his plea of nolo contendere for violating Vehicle Code section  
23 12500(A), (Driving While License Suspended), a misdemeanor. As a result of the plea, Counts 1  
24 and 2 (Driving When Privilege Suspended or Revoked for Driving Under the Influence of  
25 Alcohol or Drugs and Driving a Motor Vehicle While Using a Wireless Telephone) were  
26 dismissed pursuant to a plea agreement.

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