

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 WILLIAM D. GARDNER
Deputy Attorney General
4 State Bar No. 244817
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2114
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the Accusation Against:

Case No. 3926

12 **STEVE HERRERA**
13 **338 Conlon Avenue**
La Puente, CA 91744
14 **Pharmacy Technician License No. TCH**
68927

A C C U S A T I O N

15 Respondent.
16

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 July 10, 2006, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 68927 to Steve Herrera (Respondent). The Pharmacy Technician License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 July 31, 2012, unless renewed.

26 ///

27 ///

28

JURISDICTION

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

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

5. Section 4300 of the Code states, in pertinent part:

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

....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. Section 4301 of the Code states, in pertinent part:

"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.

....

///

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

4 "(l) The conviction of a crime substantially related to the qualifications, functions, and
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
15 of this provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
20 indictment.

21

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

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

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

OTHER RELEVANT STATUTES AND LAWS

8. California Penal Code section 243, subdivision (b), states, in pertinent part:

“When a battery is committed against the person of a peace officer . . . engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman . . . and the person committing the offense knows or reasonably should know that the victim is a peace officer . . . the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.”

9. California Penal Code section 148, subdivision (a), states:

“Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.”

10. California Vehicle Code section 23152, subdivision (b), states:

“It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.”

11. Los Angeles County Code section 13.18.010 states:

“Every person who consumes any beer, wine or other intoxicating beverage on any public street, sidewalk, alley, highway or parking lot open to the public is guilty of a misdemeanor. This section shall not be deemed to proscribe any act which is positively permitted or prohibited by any law of the state of California.”

///

1 **COST RECOVERY**

2 12. 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 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct - Criminal Conviction)**

8 13. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
9 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has
10 been convicted of a crime substantially related to the qualifications, functions, and duties of a
11 licensed pharmacy technician. The circumstances are as follows:

12 a. On or about May 25, 2005, in the criminal matter entitled *The People of the State of*
13 *California v. Steve Herrera* (Super. Ct. Los Angeles, 2005, No. 5WH02594), Respondent was
14 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a
15 greater than 0.08% blood alcohol] and one misdemeanor count of violating Penal Code section
16 148(a) [resisting arrest]. Respondent was fined and placed on probation for a period of three (3)
17 years. Respondent disclosed this conviction on his application for licensure, and following an
18 investigation into the matter, the Board issued Pharmacy Technician License Number TCH 68927
19 to Steve Herrera on or about July 10, 2006. Since that time, Respondent has been convicted of
20 additional crimes on multiple occasions.

21 b. On or about October 17, 2008, Respondent entered a plea of nolo contendere and was
22 convicted of one misdemeanor count of violating Penal Code section 243(b) [battery against a
23 peace officer] in the criminal proceeding entitled *The People of the State of California v. Steve*
24 *Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB05013). Respondent was placed on
25 probation for a period of 3 years, sentenced to 2 days in jail and 28 days of community service,
26 and ordered to attend anger management classes.

27 c. The circumstances underlying the conviction are that on or about May 24, 2008, the
28 Los Angeles County Sheriff's Department responded to a domestic disturbance call involving an

1 intoxicated individual who was reportedly throwing bricks and attempting to enter a residence in
2 Hacienda Heights, California, without permission. Once on the scene, the deputies encountered
3 Respondent, dressed only in his underwear and tennis shoes, kicking at the front door of the
4 residence. As one of the deputies approached Respondent, Respondent charged the deputy and
5 attempted to punch him in the head. The deputy was able to subdue Respondent, whereupon he
6 was arrested and charged with assault and battery.

7 d. On or about November 25, 2008, Respondent entered a plea of nolo contendere and
8 was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with
9 a greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of*
10 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB09380). Respondent
11 was placed on probation for a period of 3 years, sentenced to 4 days in jail, and ordered to attend
12 an 18-month second offender alcohol program.

13 e. The circumstances underlying the conviction are that on or about October 3, 2008, an
14 officer of the West Covina Police Department stopped Respondent after observing him speeding
15 and weaving in and out of traffic lanes. While questioning Respondent, the arresting officer
16 observed that Respondent smelled of alcohol, had slurred speech, bloodshot eyes and was
17 unsteady on his feet. Respondent was then asked to perform a series of field sobriety tests, which
18 he failed. Respondent also provided two breath samples to an alcohol screening device which
19 registered Respondent's blood alcohol content at .12.

20 f. On or about March 16, 2009, Respondent entered a plea of nolo contendere and was
21 convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a
22 greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of*
23 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8RI06642). Respondent
24 was placed on probation for a period of 4 years, sentenced to 4 days in jail, and ordered to attend
25 an 18-month alcohol offender program.

26 g. The circumstances underlying the conviction are that on or about October 18, 2008,
27 the Los Angeles County Sheriff's Department responded to a call regarding a possible drunk
28 driver on Sunset Avenue in La Puente, California. Once on the scene, the deputy contacted a

1 witness who informed him that the suspected drunk driver had driven off road, abandoned his
2 vehicle and fled the scene. The deputy then observed a man (Respondent) staggering down the
3 street with his shirt off. While questioning Respondent, the arresting officer observed that
4 Respondent smelled strongly of alcohol, had watery, bloodshot eyes, and was unsteady on his
5 feet. Respondent admitted that he had been drinking and that he was the driver of the vehicle in
6 question. Respondent also provided a breath sample to an alcohol screening device which
7 registered Respondent's blood alcohol content at .28.

8 h. On or about February 8, 2010, Respondent entered a plea of nolo contendere and was
9 convicted of one misdemeanor count of violating Los Angeles County Code section 13.18.010
10 [consuming alcohol in public place] in the criminal proceeding entitled *The People of the State of*
11 *California v. Steve Herrera* (Super. Ct. Los Angeles County, 2009, No. 9BF03310). Respondent
12 was ordered to serve 3 days in jail.

13 i. The circumstances underlying the conviction are that on or about June 11, 2009, a
14 Los Angeles Sheriff's Department deputy observed Respondent drinking beer from a 40 oz. bottle
15 in the parking lot of a Norwalk, California, convenience store.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

18 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
19 that Respondent has used alcoholic beverages to the extent and/or in a manner as to be dangerous
20 or injurious to himself and the public. Complainant refers to and by this reference incorporates
21 the allegations set forth above in paragraph 13, subdivisions a through i, inclusive, as though set
22 forth fully herein.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(Unprofessional Conduct -- Multiple Misdemeanors Involving Alcohol)**

25 15. Respondent is subject to disciplinary action under section 4301, subdivision (k), in
26 that Respondent has been convicted of more than one misdemeanor involving the use of alcoholic
27 beverages. Complainant refers to and by this reference incorporates the allegations set forth
28 above in paragraph 13, subdivisions a through i, inclusive, as though set forth fully herein.

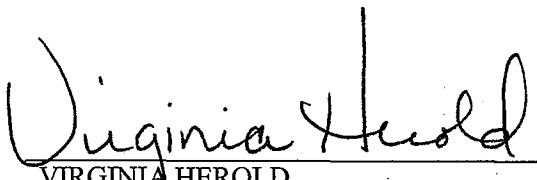
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 68927, issued to Steve Herrera;
2. Ordering Steve Herrera to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/27/11



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

LA2011600159
60619254.doc