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

12 In the Matter of the Accusation Against:

Case No. 3956

13 **COLLEEN MARY WHITTAKER**
149 Olive St., #38
15 Paso Robles, CA 93446

A C C U S A T I O N

16 Pharmacy Technician License No. TCH 78790

17 Respondent.

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 (Board).

22 2. On or about August 2, 2008, the Board issued Pharmacy Technician License No.
23 TCH 78790 to Colleen Mary Whittaker (Respondent). The Pharmacy Technician License was in
24 full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

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

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

9 6. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
10 revoked.”

11 7. Section 4301 states, in pertinent part:

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

15 ...

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

21

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

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. . . .”

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1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Conviction of Substantially Related Crime)**

16 10. Respondent is subject to disciplinary action under sections 490, 4300, 4301,
17 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
18 grounds of unprofessional conduct, in that on or about August 26, 2009, Respondent was
19 convicted of a crime substantially related to the qualifications, functions or duties of a registered
20 pharmacy technician which to a substantial degree evidence her present or potential unfitness to
21 perform the functions authorized by her license in a manner consistent with the public health,
22 safety, or welfare, as follows:

23 a. On or about April 26, 2009, after pleading nolo contendere and admitting to two (2)
24 prior convictions for the same violation, Respondent was convicted of one (1) misdemeanor count
25 of violating Vehicle Code section 23152(b) [drive while having an equal to or greater than 0.08%
26 blood alcohol, to wit, 0.21% BAC] in the criminal proceeding entitled *The People of the State of*
27 *California v. Colleen Mary Whittaker* (Super. Ct. San Luis Obispo County, 2009, No.
28 M000435556). The Court sentenced Respondent to 180 days in jail, placed her on four (4) years

1 probation, ordered her to complete a 2nd Offender DWI Program, and ordered the Department of
2 Motor Vehicles to revoke her driving privilege.

3 b. The circumstances underlying the conviction are that on or about June 14, 2009,
4 Respondent was driving a vehicle while admittedly under the influence of alcohol.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Alcohol Related Conviction)**

7 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
8 subdivision (k), on the grounds of unprofessional conduct, in that on or about April 26, 2009,
9 Respondent sustained a conviction involving the use, consumption, or self-administration of
10 alcoholic beverages. Complainant refers to and by this reference incorporates the allegations set
11 forth above in paragraph 10, subparagraphs a and b, inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to
16 herself and / or used alcoholic beverages to the extent or in a manner as to be dangerous or
17 injurious to herself or others. Complainant refers to and by this reference incorporates the
18 allegations set forth above in paragraphs 10 and 11, inclusive, as though set forth fully.

19 **DISCIPLINE CONSIDERATIONS**

20 13. To determine the degree of discipline, Complainant alleges that:

21 a. On or about June 14, 2004, after pleading nolo contendere and admitting to two (2)
22 prior convictions for the same violation, Respondent was convicted of one (1) misdemeanor count
23 of violating Vehicle Code section 23152(b) [drive while having an equal to or greater than 0.08%
24 blood alcohol, to wit, 0.17% BAC] in the criminal proceeding entitled *The People of the State of*
25 *California v. Colleen Mary Whittaker* (Super. Ct. San Luis Obispo County, 2009, No.
26 M000356533). The Court sentenced Respondent to 14 days in jail, placed her on three (3) years
27 probation, and ordered her to complete a 2nd Offender DWI Program. The violation occurred on
28 or about April 17, 2004.

