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

11 In the Matter of the Accusation Against:
12 **CHARLES THOMAS PATTERSON, II**
13 **4560 Twain Avenue, #1**
14 **San Diego, CA 92120**
15 **Pharmacy Technician Registration**
No. TCH 16685
16 Respondent.

Case No. 4039

ACCUSATION

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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 28, 1995, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 16685 to Charles Thomas Patterson, II (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on November 30, 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.

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8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any 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.

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

9. Section 493 of the Code states:

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

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

1 to any other person or to the public, or to the extent that the use impairs the ability of
2 the person to conduct with safety to the public the practice authorized by the license.

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

5 (l) The conviction of a crime substantially related to the qualifications,
6 functions, and duties of a licensee under this chapter. The record of conviction of a
7 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
8 States Code regulating controlled substances or of a violation of the statutes of this
9 state regulating controlled substances or dangerous drugs shall be conclusive
10 evidence of unprofessional conduct. In all other cases, the record of conviction shall
11 be conclusive evidence only of the fact that the conviction occurred. The board may
12 inquire into the circumstances surrounding the commission of the crime, in order to
13 fix the degree of discipline or, in the case of a conviction not involving controlled
14 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.

15 ...
16 11. Title 16, California Code of Regulations, section 1769, states:

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

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

22 (2) Total criminal record.

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

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

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

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1 12. Title 16, California Code of Regulations, section 1770, states:

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

6 **COST RECOVERY**

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

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(May 2, 2001 Criminal Conviction for Driving Under the Influence of Alcohol With Blood
13 Alcohol Content of 0.08% or More on April 29, 2001)**

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

17 15. On or about May 2, 2001, in a criminal proceeding entitled *The People of the State of*
18 *California v. Charles T. Patterson*, in the San Diego Superior Court, Case No. S159181,
19 Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152(b)
20 (driving under the influence of alcohol with a blood alcohol content of 0.08% or More), a
21 misdemeanor.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(November 7, 2006 Criminal Conviction for Driving Under the Influence of Alcohol With
24 Blood Alcohol Content of 0.08% or More on January 2, 2005)**

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

1 22. On or about November 23, 2010, in a criminal proceeding entitled *The People of the*
2 *State of California v. Charles T. Patterson*, in the San Diego Superior Court, East County
3 Division, Case No. C303534, Respondent was convicted on his plea of guilty of violating Vehicle
4 Code section 23152(a) (driving under the influence of alcohol and/or drugs with two or more
5 prior DUI's), a misdemeanor. As a result of Respondent's plea, the Court dismissed original
6 charges filed for violation of Business and Professions Code section 4060 (possession of a
7 controlled substance without a prescription, to wit: Soma and Xanax), Vehicle Code section
8 23154(a) (driving with blood alcohol concentration of .01% or more while on probation), and
9 Health and Safety Code section 11375(b)(2) (possession of designated controlled substances, to
10 wit: Soma and Xanax).

11 23. The circumstances that led to the conviction are that on May 27, 2010, at
12 approximately 0145 hours, Respondent was stopped by San Diego County Sheriff's deputies
13 stopped Respondent's vehicle. Upon making contact with Respondent, deputies observed that
14 Respondent was showing signs of being under the influence of alcohol and/or drugs. Respondent
15 told officers that he had two beers earlier in the evening and felt "a little drunk." Respondent
16 failed a field sobriety test. Respondent submitted to a preliminary alcohol screening and blew
17 0.49% at 0202 hours and 0.53% at 0204 hours. A search of Respondent's person and vehicle
18 revealed that Respondent was in possession of six Soma pills and nineteen Xanax pills without a
19 prescription. Respondent was placed under arrest. Respondent was found to have an outstanding
20 no bail warrant (#M051352) for violating a court order.

21 24. As a result of the above conviction, Respondent was placed on five (5) years
22 summary probation and sentenced to serve 120 days, with 2 days credit for time served, and was
23 allowed work furlough. Respondent was also ordered to pay various fees and fines, and to enroll
24 in and complete a MADD program.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol and/or Drugs to an Extent or Manner Dangerous or Injurious**
3 **to Self or Others)**

4 25. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
5 he used alcohol and/or drugs or controlled substances to an extent or in a manner dangerous or
6 injurious to himself or others, as is more fully detailed at paragraphs 14-17 and 21-24, above,
7 which are incorporated here by reference.

8 **SIXTH CAUSE FOR DISCIPLINE**

9 **(Multiple Convictions for Driving Under the Influence of Alcohol)**

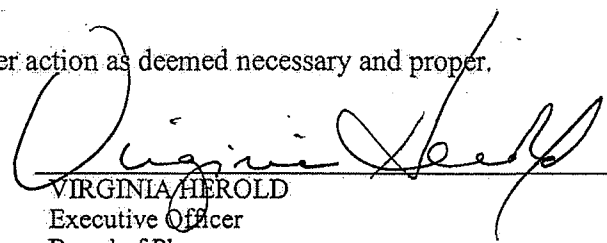
10 26. Respondent is subject to disciplinary action under section 4301(k) of the Code in that
11 he was convicted of more than one misdemeanor or any felony involving the use, consumption, or
12 self-administration of any dangerous drug or alcoholic beverage, or any combination of those
13 substances, as is more fully detailed at paragraphs 14-17 and 21-24, above, which are
14 incorporated here by reference.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 16685,
19 issued to Charles Thomas Patterson, II;
- 20 2. Ordering Charles Thomas Patterson, II, to pay the Board of Pharmacy the reasonable
21 costs of the investigation and enforcement of this case, pursuant to Business and Professions
22 Code section 125.3;
- 23 3. Taking such other and further action as deemed necessary and proper.

24 DATED: 10/4/11



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