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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. 4205

13 **DAVID ANTHONY DEAN**  
312 E. Victoria Street  
Santa Barbara, CA 93101

**A C C U S A T I O N**

14 Pharmacist License No. RPH 40094

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 1, 1986, the Board of Pharmacy (Board) issued Pharmacist License  
22 No. RPH 40094 to David Anthony Dean (Respondent). The Pharmacist License was in full force  
23 and effect at all times relevant to the charges brought herein and will expire on July 31, 2013,  
24 unless renewed.

25 **JURISDICTION**

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

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**STATUTORY PROVISIONS**

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

5. Section 490 states, in pertinent part:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

“(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

“(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.”

6. Section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Section 4301 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:

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1       “(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
2 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
3 oneself, to a person holding a license under this chapter, or to any other person or to the public, or  
4 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
5 practice authorized by the license.

6       ....

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

#### 24                                   REGULATORY PROVISIONS

25       8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

### 5 **COST RECOVERY**

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

### 10 **FIRST CAUSE FOR DISCIPLINE**

#### 11 **(Conviction of a Substantially Related Crime)**

12 10. Respondent is subject to disciplinary action under Sections 4301, subdivision (I) and  
13 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,  
14 Respondent was convicted of a crime substantially related to the qualifications, functions, or  
15 duties of a Pharmacist. On or about August 4, 2011, after pleading nolo contendere, Respondent  
16 was convicted of one misdemeanor count of violating Vehicle Code section 23103.5 [wet/reckless  
17 driving] in the criminal proceeding entitled *The People of the State of California v. David Dean*  
18 (Super. Ct. Santa Barbara County, 2011, No. 1387615). The Court sentenced Respondent to  
19 serve two days in Santa Barbara County Jail and placed him on three years' probation, with terms  
20 and conditions. The circumstances surrounding the conviction are as follows:

21 11. On or about May 12, 2011, during an investigation of a possible drunk driver by the  
22 Santa Barbara Police Department, Respondent was contacted. Respondent's vehicle was in front  
23 of New House II Sober Living Home (Sober Living), blocking traffic, he was intoxicated and  
24 attempting to drive away. While speaking to Respondent, the officer detected an odor of  
25 alcoholic beverage on his breath. He was observed to have bloodshot, watery eyes, and his  
26 speech was agitated, slow, and slurred. The officer administered field sobriety tests on  
27 Respondent during which he exhibited numerous signs of impairment. When asked how much he  
28 had to drink, Respondent initially indicated he had consumed three glasses of wine, and then

1 stated he had "four glasses of white wine." Respondent admitted to the officer that he had arrived  
2 at Sober Living with alcohol on his breath and was loading his belongings because he knew he  
3 had to leave for failing to stay sober. He further admitted that he had only been at Sober Living  
4 for two to three days beforehand, and that he had recently been discharged from "CRC" (the  
5 Cottage Hospital rehabilitation center on West Montecito Street). Respondent submitted to a  
6 Preliminary Alcohol Screening Test (PAS) that resulted in a breath-alcohol content level of  
7 0.094%. Respondent was subsequently arrested because he was deemed to be so intoxicated that  
8 he could have been a danger to himself or others, and he was charged with violating Vehicle  
9 Code section 23152, subdivision (a) [driving under the influence of alcohol or drugs] and Vehicle  
10 Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol  
11 in his blood]. A blood sample was also taken from Respondent, and the test results showed that  
12 his blood alcohol content level was 0.09%.

## 13 **SECOND CAUSE FOR DISCIPLINE**

### 14 **(Dangerous Use of Alcohol)**

15 12. Respondent is subject to disciplinary action under Section 4301, subdivision (h), in  
16 that Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to  
17 himself, another person, or the public, as follows:

18 a. On or about May 12, 2011, Respondent was under the influence of alcohol, in a  
19 public place, and which posed a danger to his safety and/or the safety of others. Complainant  
20 refers to, and by this reference incorporates, the allegations set forth above in Paragraphs 10 and  
21 11, as though set forth fully.

## 22 **PRAYER**

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

25 1. Revoking or suspending Pharmacist License No. RPH 40094, issued to Respondent  
26 David Anthony Dean;

27 2. Ordering Respondent David Anthony Dean to pay the Board the reasonable costs of  
28 the investigation and enforcement of this case, pursuant to section 125.3; and

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3. Taking such other and further action as deemed necessary and proper.

DATED:

8/13/12

*Virginia K. Herold*

VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California

*Complainant*

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