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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:

Case No. 4218

12 **GILBERT BARRON**  
13 **315 E. 30th Street, #G**  
14 **National City, CA 91950.**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 10422**

Respondent.

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 November 5, 1993, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 10422 to Gilbert Barron (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on July 31, 2013, 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 e 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:

....

(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.

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

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

22 (p) Actions or conduct that would have warranted denial of a license.

23 ....

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

25 ....

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

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

(2) Total criminal record.

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

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

(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 licentiate 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 **(April 22, 2003 Criminal Conviction for Driving Under the Influence of Alcohol  
13 With BAC of 0.15% or More on December 21, 2002)**

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

18 15. On or about April 22, 2003, in a criminal proceeding entitled *People of the State of*  
19 *California vs. Gilbert Barron*, in the San Diego Superior Court, in case number SCS174337,  
20 Respondent pled guilty to violating Vehicle Code section 23152(a) (driving under the influence of  
21 alcohol), a misdemeanor.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(July 5, 2011 Criminal Conviction for Driving Under the Influence of Alcohol  
24 [BAC 0.24%] on April 11, 2011)**

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

1           17. On or about July 5, 2011, in a criminal proceeding entitled *People of the State of*  
2 *California vs. Gilbert Barron*, in the San Diego Superior Court, Central Division, in case number  
3 CD134165, Respondent pled guilty to violating Vehicle Code section 23152(a) (driving under the  
4 influence of alcohol), a misdemeanor.

5           18. The circumstances that led to the conviction are that on or about April 11, 2011, at  
6 approximately 2335 hours, California Highway Patrol officers, while on routine patrol, received a  
7 radio call from a dispatcher who reported a wrong-way driver on SR-94 eastbound in the  
8 westbound lanes at about SR-15. The reporting party observed the vehicle (a white Ford  
9 Mustang) pass I-805 traveling the wrong way and eventually pulling into the center divider. The  
10 suspect vehicle was observed by the reporting party making a U-turn on the freeway and exiting  
11 SR-94 westbound to 30th Street.

12           19. At approximately 2341 hours, officers located the vehicle at 30th Street and activated  
13 the red emergency lights. The suspect vehicle yielded to the right shoulder on southbound 30th  
14 Street at SR-94.

15           20. When officers made contact with the driver of the suspect vehicle (Respondent), they  
16 detected a distinct odor of an alcoholic beverage emitting from within the vehicle and noticed the  
17 driver's eyes were red and watery and the driver could not form a coherent statement. When  
18 asked for his driver's license, Respondent reached into his pocket and pulled out his cell phone  
19 and handed it to the officers. Respondent was asked to step out of the vehicle and had to be  
20 assisted by officers as he stumbled. Respondent was asked to perform a series of field sobriety  
21 tests, which he failed. Respondent did not have his driver's license on his person and gave  
22 officers his name and date of birth, which came back with a description matching Respondent.  
23 Respondent was asked by officers to blow into a PAS machine, which readings came back at  
24 .239%, .156% and .237%. Respondent was placed under arrest and transported to the San Diego  
25 County Jail where he provided a blood sample at 0031 hours which, when analyzed, indicated  
26 Respondent's blood alcohol was 0.24%.

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1 21. As a result of the conviction, the Court placed Respondent on formal probation for  
2 five (5) years to expire on August 30, 2016, and was committed to the custody of the Sheriff for  
3 365 days, with execution of sentence suspended. Respondent was also ordered to pay various  
4 fines and fees.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Use of Alcohol in a Manner Injurious to Oneself, to Any Other  
7 Person or to the Public)**

8 22. Respondent is subject to disciplinary action under section 4301, subdivisions (h) of  
9 the Code in that Respondent in that on December 21, 2002 and April 11, 2011, Respondent used  
10 alcohol in a manner dangerous and injurious to himself, to any other person or to the public, as is  
11 more fully detailed at paragraphs 14-21, above, which are incorporated here by reference.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Multiple Convictions Involving the Use of Alcoholic Beverages)**

14 23. Respondent has subjected his license to disciplinary action under section 4301,  
15 subdivision (k) of the Code in that on or about April 22, 2003 and July 5, 2011, Respondent was  
16 convicted in two separate cases on charges involving the consumption of alcoholic beverages, as  
17 detailed in paragraphs 14-21, above, which are incorporated here by reference.

18 **FIFTH CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct - Committed Act Which Would Have Warranted  
20 Denial of License)**

21 24. Respondent is subject to disciplinary action under section 4301(p) of the Code in that  
22 he engaged in actions or conduct that would have warranted denial of a license, as fully set forth  
23 at paragraph 14-21, above, which are incorporated here by reference.  
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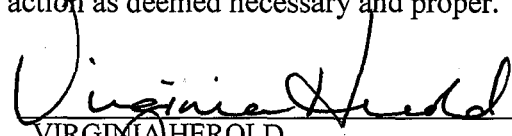
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PRAYER

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 Registration Number TCH 10422, issued to Gilbert Barron;
2. Ordering Gilbert Barron 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: 7/10/12



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

SD2011801871