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

11 In the Matter of the Accusation Against:

Case No. 4255

12 **MICHAEL TZUNG-HSUN YANG**  
2555 Aurora Drive  
13 Yuba City, CA 95991

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

14 **Pharmacist License No. RPH 53881**

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 August 26, 2002, the Board of Pharmacy issued Pharmacist License  
22 Number RPH 53881 to Michael Tzung-Hsun Yang (Respondent). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on March  
24 31, 2012, unless renewed.

25 JURISDICTION

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

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

- (a) Every license issued may be suspended or revoked.
- (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
  - (1) Suspending judgment.
  - (2) Placing him or her upon probation.
  - (3) Suspending his or her right to practice for a period not exceeding one year.
  - (4) Revoking his or her license.
  - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

5. 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.

....

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

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
2 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
3 dismissing the accusation, information, or indictment.

4 .....

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

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

### 12 **FIRST CAUSE FOR DISCIPLINE**

#### 13 **(Criminal Conviction)**

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

17 9. On or about April 8, 2009, in the criminal proceeding entitled *People v. Michael Yang*  
18 (Super. Ct. Colusa County, 2009, Case No. CR50135), Respondent pled nolo contendere to  
19 violation Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor. The  
20 circumstances of the crimes are that on or about November 28, 2008, an officer with the  
21 California Highway Patrol observed Respondent's vehicle driving at a speed of approximately  
22 95-100 miles per hour, on a roadway that was posted with a maximum speed limit of 55 miles per  
23 hour. The weather conditions were foggy with visibility of approximately a half mile, and the  
24 roadway was wet. When contacted by the officer, Respondent stated that he knew he was driving  
25 fast but was late for work at the Walmart in Clearlake. Based upon the high rate of speed and the  
26 adverse weather conditions, the CHP officer arrested Respondent.

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1 SECOND CAUSE FOR DISCIPLINE

2 **(Use of Dangerous Drugs in a Manner Dangerous Oneself, Others, and the Public)**

3 10. Respondent is subject to disciplinary action under section 4301, subdivision (h) in  
4 that he used dangerous drugs to the extent or in a manner as to be dangerous or injurious to  
5 oneself, or to any other person or to the public. The circumstances are as follows:

6 11. On or about March 29, 2009, California Highway Patrol Officer Dombly responded to  
7 a call about a driver who was possible under the influence of alcohol or drugs. Officer Dombly  
8 located Respondent's vehicle and observed that the vehicle was traveling approximately 65 miles  
9 per hour, and was almost completely on the shoulder of the road with both wheels. While tailing  
10 Respondent, Officer Dombly observed the vehicle straddling the right painted edge line of the  
11 road for approximately 200 feet, and the officer then performed a traffic stop on Respondent's  
12 vehicle. During the traffic stop, Respondent was observed to be agitated and speaking rapidly.  
13 When asked if he was taking any medications or seeing a doctor for any reason, Respondent  
14 answered that he was not, and that he had not taken any medication prior to driving. Respondent  
15 performed a series of field sobriety tests in a manner that demonstrated impairment. Respondent  
16 then admitted that he had taken Sudafed prior to driving and gave the officer permission to look  
17 inside the vehicle for the Sudafed. In addition to locating Sudafed, Officer Dombly located the  
18 following prescription medications: Promethazine, Hydorcodone, Tricor, Cyclobezap,  
19 Methocarbamal, Pantroprazole, Tixanidine, Lexapro, Budepropin, and Sumatriptan. Respondent  
20 was arrested for a violation of Vehicle Code section 23152(a), driving a vehicle while under the  
21 influence of drugs, and was taken to the jail. At the jail, Officer Crutcher performed a drug  
22 recognition evaluation on him and collected a urine sample. Respondent admitted to having taken  
23 Norco, Wellbutrin and Lexapro that day. Based on the drug recognition evaluation, Officer  
24 Crutcher concluded that Respondent was under the combined influence of a CNS stimulant and  
25 a CNS depressant, and unable to operate a motor vehicle safely. Respondent's urine sample was  
26 provided to the Department of Justice laboratory for drug analysis and came back positive for  
27 opiates.

1 **PRIOR DISCIPLINE**

2 12. On or about April 21, 2004, Respondent was issued Citation No. CI 2003 26733 for  
3 violations of Business and Professions Code section 4073 (improper substitution of a generic  
4 drug) and California Code of Regulations, title 16, section 1716 (variation from prescription).  
5 Fines were imposed totally \$375.00.

6 **PRAYER**

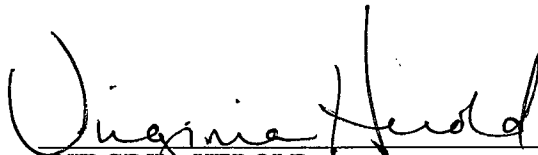
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacist License Number RPH 53881, issued to Michael  
10 Tzung-Hsun Yang,;

11 2. Ordering Michael Tzung-Hsun Yang to pay the Board of Pharmacy the reasonable  
12 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
13 Code section 125.3;

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

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17 DATED: 5/31/12

  
18 VIRGINIA HEROLD  
19 Executive Officer  
20 Board of Pharmacy  
21 Department of Consumer Affairs  
22 State of California  
23 Complainant

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