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6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Accusation Against:

Case No. 4514

11 **JACOB GUILLERMO GONZALEZ**
12 **1995 Bamboo Court**
Hayward, CA 94545

A C C U S A T I O N

13 **Pharmacy Technician Registration No.**
TCH 114244

14 Respondent.

15
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, 2011, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 114244 to Jacob Guillermo Gonzalez (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on June 30, 2013, 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.

1 4. Section 490 of the Business and Professions Code, in pertinent part, states:

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

6 . . .

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 . . .

14 5. Section 493 of the Business and Professions Code states:

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

24 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
25 'registration.'"

26 6. Section 4300 of the Business and Professions Code, in pertinent part, provides that
27 every license issued by the Board may be suspended or revoked and provides that the Board shall

28

1 discipline a licensee whose default has been entered or whose case has been heard by the board
2 and found guilty, by any of the following methods:

3 "(1) Suspending judgment.

4 "(2) Placing him or her upon probation.

5 "(3) Suspending his or her right to practice for a period not exceeding one year.

6 "(4) Revoking his or her license.

7 "(5) Taking any other action in relation to disciplining him or her as the board in its
8 discretion may deem proper.

9

10 7. Section 4301 of the Business and Professions Code, in pertinent part, states:

11 "The board shall take action against any holder of a license who is guilty of unprofessional
12 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

13 Unprofessional conduct shall include, but is not limited to, any of the following:

14

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

20

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

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

1 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
2 The board may inquire into the circumstances surrounding the commission of the crime, in order
3 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
4 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
5 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
6 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
7 of this provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting probation is made
9 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
10 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
11 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
12 indictment.

13 . . .

14 8. Section 125.3 of the Business and Professions Code, in pertinent part, provides that
15 the Board may request the administrative law judge to direct a licensee found to have committed
16 a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
17 investigation and enforcement of the case.

18 FIRST CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct - Conviction of a Crime)

20 9. Respondent is subject to disciplinary action under Business and Professions Code
21 section 4301(l) for unprofessional conduct in that he was convicted of a crime substantially
22 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances
23 surrounding this conviction are as follows:

24 a. On or about August 21, 2012, in Alameda County Superior Court Case No. 441967
25 entitled People of the State of California v. Jacob Guillermo Gonzalez respondent was convicted
26 by his plea of no contest to violating Vehicle Code section 23152(b) for driving with a blood
27 alcohol level of 0.08 percent or higher with a special enhancement for a Blood Alcohol
28 Concentration (BAC) over 0.15%, a misdemeanor.

1 b. On or about April 1, 2012, at approximately 0156 hours, an Alameda County
2 Sheriff's Deputy observed a vehicle stopped at the bottom of an off ramp 15 feet beyond the limit
3 line at the bottom of the off ramp. Upon approaching the vehicle, the deputy discovered that the
4 vehicle's motor was still running and he found the respondent in the driver seat, slouched back
5 apparently unconscious until the deputy opened the driver's side door. When the deputy contacted
6 respondent, he noticed that the vehicle was in gear and respondent's foot was on the brake. The
7 deputy directed respondent to put the vehicle in park and turn off the ignition. The respondent
8 released the brake and the vehicle began to roll onto the street but respondent was able to reapply
9 the brake and the deputy assisted the respondent in turning off the vehicle. The deputy noticed
10 that respondent's eyes were red and watery and his speech was slurred. The deputy could smell
11 the odor of an alcoholic beverage on respondent's breath and person. The respondent admitted to
12 the deputy that he had consumed alcoholic beverages few hours prior to this traffic stop. Based
13 on these observations, the deputy conducted a series of Field Sobriety Tests (FSTs) which the
14 respondent failed to perform satisfactory. Also, the deputy administered a Preliminary Alcohol
15 Screening (PAS) Test, which resulted in a Blood Alcohol Concentration (BAC) of 0.180% at
16 0220 hours and 0.175% at 0221 hours. Based on respondent's performance on the FSTs, the
17 deputy formed the opinion that respondent was driving while under the influence of an alcoholic
18 beverage. Respondent was subsequently arrested and transported to the county jail where he
19 submitted to a blood test. Respondent was booked into the county jail for violating Vehicle Code
20 section 23152(b) – Blood Alcohol Above .08%, a misdemeanor. Respondent's blood test reported
21 a BAC of 0.20%.

22 c. On or about August 21, 2012, the respondent was placed on probation for three years
23 and was ordered to enroll and complete a nine month Driving Under the Influence School,
24 ordered to serve five days in the county jail, and ordered to pay fines and fees totaling \$1,810.00.

25 SECOND CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct - Conviction of a Crime)

27 10. Respondent is subject to disciplinary action under Business and Professions Code
28 section 4301(1) for unprofessional conduct in that he was convicted of a crime substantially

1 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances
2 surrounding this conviction are as follows:

3 a. On or about September 25, 2012, in Alameda County Superior Court Case No.
4 439491 entitled People of the State of California v. Jacob Guillermo Gonzalez respondent was
5 convicted by his plea of no contest to violating Vehicle Code section 23152(b) for driving with a
6 blood alcohol level of 0.08 percent or higher, a misdemeanor.

7 b. On or about December 1, 2011, at approximately 0115 hours California Highway
8 Patrol officers conducted an enforcement stop in Alameda County after they observed respondent
9 stop his vehicle past the stop limit line approximately three feet into the bicycle lane. Upon
10 making contact with respondent the one of the officers could smell the odor of an alcoholic
11 beverage emitting from the interior of the vehicle, as well as from respondent's breath and person.
12 The officer also noticed that the respondent's eyes were red and watery and his speech was
13 slurred. The Respondent told the officer that he had consumed three beers earlier in the evening.

14 The officer administered a series of Field Sobriety Tests (FSTs), which respondent failed to
15 perform as explained and demonstrated. Also, respondent submitted to a Preliminary Alcohol
16 Screening (PAS) Test, which resulted in a Blood Alcohol Concentration (BAC) of 0.151% at
17 0130 hours and 0.144% at 0132 hours. Based on respondent's driving ability, his objective
18 symptoms of intoxication, his performance on the FSTs and his results on the PAS test, the
19 officer formed the opinion that respondent was driving while under the influence of an alcoholic
20 beverage. Respondent was subsequently arrested and transported to the county jail where he
21 submitted to a blood test. Respondent was booked into the county jail for violating Vehicle Code
22 section 23152(a) – DUI Alcohol/Drugs, a misdemeanor. Respondent's blood test reported a BAC
23 of 0.17%.

24 c. On or about September 25, 2012, the respondent was placed on court probation for
25 three years and was ordered to enroll and complete a three month Driving Under the Influence
26 School, ordered to serve two days in the county jail, and ordered to pay fines and fees totaling
27 \$1,961.00.

28 / / /

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct- Use of Alcohol in a dangerous manner)

3 11. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301(h) for unprofessional conduct in that on December 1, 2011 and on April 1, 2012 he
5 used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to any other
6 person or to the public, as set forth in paragraphs 9 and 10, above.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct - Alcohol Related Conviction)

9 12. Respondent is subject to disciplinary action under Business and Professions Code
10 section 4301(k) for unprofessional conduct in that on August 21, 2012 and on September 25,
11 2012, he was convicted of one or more misdemeanors involving the use of alcoholic beverages, as
12 set forth in paragraphs 9 and 10, above.

13
14 PRAYER

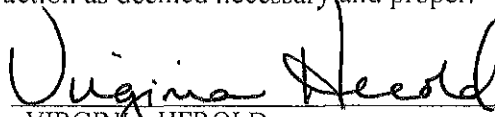
15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision:

17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114244,
18 issued to Jacob Guillermo Gonzalez;

19 2. Ordering Jacob Guillermo Gonzalez to pay the Board of Pharmacy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3;

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

23 DATED: 3/21/13



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

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