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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. 4559

12 **MICHAEL RICHARD JAY**  
13 **1814 West Tedmard Avenue**  
**Anaheim, CA 92804-2646**

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

14 **Pharmacist No. RPH 36457**

15 Respondent.  
16

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 August 17, 1981, the Board of Pharmacy issued Pharmacist Number  
23 RPH 36457 to Michael Richard Jay (Respondent). The Pharmacist was in full force and effect at  
24 all times relevant to the charges brought herein and will expire on February 28, 2015, unless  
25 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 of the Code states:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the  
8 board, whose default has been entered or whose case has been heard by the  
board and found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

15 ...

16 (e) The proceedings under this article shall be conducted in accordance  
17 with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of  
the Government Code, and the board shall have all the powers granted  
18 therein. The action shall be final, except that the propriety of the action is  
subject to review by the superior court pursuant to Section 1094.5 of the  
Code of Civil Procedure.  
19

20 **STATUTORY PROVISIONS**

21 5. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to  
23 evaluate the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480;

24 or

25 (b) Considering suspension or revocation of a license under Section  
490.

26 "Each board shall take into account all competent evidence of  
rehabilitation furnished by the applicant or licensee.

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1           6.     Section 490 of the Code provides, in pertinent part, that a board may suspend or  
2 revoke a license on the ground that the licensee has been convicted of a crime substantially  
3 related to the qualifications, functions, or duties of the business or profession for which the  
4 license was issued.

5           7.     Section 493 of the Code states:

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

17                 As used in this section, 'license' includes 'certificate,' 'permit,'  
18 'authority,' and 'registration.'

19           8.     Section 4301 of the Code states:

20                 The board shall take action against any holder of a license who is  
21 guilty of unprofessional conduct or whose license has been procured by  
22 fraud or misrepresentation or issued by mistake. Unprofessional conduct  
23 shall include, but is not limited to, any of the following:

24                 ...

25                 (h) The administering to oneself, of any controlled substance, or the  
26 use of any dangerous drug or of alcoholic beverages to the extent or in a  
27 manner as to be dangerous or injurious to oneself, to a person holding a  
28 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.

29                 ...

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

33                 (l) The conviction of a crime substantially related to the qualifications,  
34 functions, and duties of a licensee under this chapter. The record of  
35 conviction of a violation of Chapter 13 (commencing with Section 801) of  
36 Title 21 of the United States Code regulating controlled substances or of a  
37 violation of the statutes of this state regulating controlled substances or

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

17 ...

## 18 REGULATORY PROVISIONS

19 9. California Code of Regulations, title 16, section 1769, states:

20 (a) When considering the denial of a facility or personal license under  
21 Section 480 of the Business and professions code, the board, in evaluating  
22 the rehabilitation of the applicant and his present eligibility for licensing or  
23 registration, will consider the following criteria:

24 (1) The nature and severity of the act(s) or offense(s) under  
25 consideration as grounds for denial.

26 (2) Evidence of any act(s) committed subsequent to the act(s) or  
27 crime(s) under consideration as grounds for denial under Section 480 of the  
28 Business and professions code.

(3) The time that has elapsed since commission of the act(s) or  
crime(s) referred to in subdivision (1) or (2).

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

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

(b) When considering the suspension or revocation of a facility or a  
personal license on the ground that the licensee or the registrant has been  
convicted of a crime, 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.

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

3 10. California Code of Regulations, title 16, section 1770, states:

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

### 12 **COST RECOVERY**

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation or violations of  
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
16 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
17 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
18 included in a stipulated settlement.

### 19 **FIRST CAUSE FOR DISCIPLINE**

20 **(July 19, 2011 Driving Under the Influence on May 31, 2010)**

21 12. Respondent's license is subject to discipline under Code section 490 subdivisions  
22 section 4301 subdivisions (l) in that he was convicted of a crime that is substantially related to the  
23 qualifications, duties, and functions of a Pharmacy Technician. The circumstances are as follows:

24 a. On or about September 29, 2012, in a criminal proceeding entitled *People of the State*  
25 *of California v. Michael Richard Jay*, in Orange County Superior Court, Case Number  
26 AN10NM1 1993, Respondent was charged with violating Vehicle Code sections 23152  
27 subdivision (a), driving under the influence. Respondent was convicted on his plea of guilty to  
28 driving under the influence of prescription drugs.

b. As a result of his conviction on or about July 19, 2011, Respondent was  
sentenced to 3 years probation, and ordered to pay \$1073 in fines, ordered to complete a first  
offender DUI program and serve one day in jail.

1 c. The facts that led to the conviction are that on or about May 31, 2010, at  
2 approximately 5:38 p.m. Respondent attempted to turn in front of a passenger bus. Respondent's  
3 abrupt turn caused a collision between his vehicle and the passage bus. When police arrived they  
4 noticed that Respondent showed objective signs of intoxication such as slow and slurred speech.  
5 Respondent was asked to perform a serious of field sobriety tests which he failed. Respondent at  
6 first denied ingesting either drugs or alcohol prior to driving, but later admitted that using Ambien  
7 and Diovan/HCT earlier in the day. Respondent was arrested and a toxicology screen of his  
8 blood found the presence of Clonazepam a muscle relaxant and Clonazepam metabolites;  
9 Triazolam a sedative; Hydroxyethylfurazepam a derivative of the sleeping medication flurazepam;  
10 Desalkylfurazepam a derivative of the sleeping medication Quazepam, Tramadol a moderate to  
11 severe pain medication and its metabolite, Hydrocodone an opiate derived pain medication and  
12 Zolpidem a drug sold under the brand name Ambien as a sedative.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct - Dangerous Use of Alcohol and drugs)**

15 13. Respondent's license is subject to discipline under sections 490 and section 4301 (h)  
16 of the Code in that on or about May 31, 2010, Respondent used controlled substances to an extent  
17 or in a manner dangerous or injurious to himself and the public when he was arrested for driving  
18 under the influence after consuming prescription drugs as outlined in paragraph 11, above.

19 **PRAYER**

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

- 22 1. Revoking or suspending Pharmacist Number RPH 36457, issued to Michael Richard  
23 Jay;
- 24 2. Ordering Michael Richard Jay to pay the Board of Pharmacy the reasonable costs of  
25 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3;

27 ///

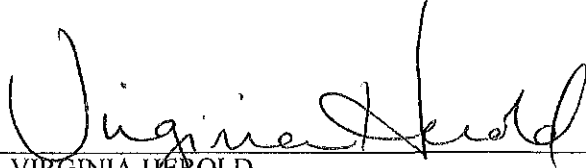
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3. Taking such other and further action as deemed necessary and proper.

DATED:

3/27/13



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