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10 **BEFORE THE**  
**BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 4616

13 **TERRY L. HIBBS**  
10218 Stonehurst Drive  
14 Escondido, CA 92026

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

15 **Pharmacist License No. RPH 41315**

16 Respondent.  
17

18 Complainant alleges:

19 **PARTIES**

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

22 2. On September 26, 1987, the Board of Pharmacy issued Pharmacist License  
23 Number RPH 41315 to Terry L. Hibbs (Respondent). Respondent has also been known as Terry  
24 Lee Hibbs. The Pharmacist License was in full force and effect at all times relevant to the  
25 charges brought herein and will expire on September 30, 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 (Code) unless otherwise indicated.

5 4. Section 4300, subdivision (a), of the Code states that every license issued may be  
6 suspended or revoked.

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law,  
10 the placement of a license on a retired status, or the voluntary surrender of a  
11 license by a licensee shall not deprive the board of jurisdiction to commence or  
12 proceed with any investigation of, or action or disciplinary proceeding against, the  
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 17 (b) Considering suspension or revocation of a license under Section 490.

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

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
21 revoke a license on the ground that the licensee has been convicted of a crime substantially  
22 related to the qualifications, functions, or duties of the business or profession for which the  
23 license was issued.

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by  
26 a board within the department pursuant to law to deny an application for a license  
27 or to suspend or revoke a license or otherwise take disciplinary action against a  
28 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

1 the crime in order to fix the degree of discipline or to determine if the conviction  
2 is substantially related to the qualifications, functions, and duties of the licensee in  
3 question.

4 As used in this section, 'license' includes 'certificate,' 'permit,'  
5 'authority,' and 'registration.'

6 9. Section 4301 of the Code states:

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

11 . . . .

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

18 . . . .

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

22 (l) The conviction of a crime substantially related to the qualifications,  
23 functions, and duties of a licensee under this chapter. The record of conviction of  
24 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United  
25 States Code regulating controlled substances or of a violation of the statutes of  
26 this state regulating controlled substances or dangerous drugs shall be conclusive  
27 evidence of unprofessional conduct. In all other cases, the record of conviction  
28 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 section 1203.4 of the Penal Code allowing the person to  
withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
the verdict of guilty, or dismissing the accusation, information, or indictment.

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1 **REGULATORY PROVISIONS**

2 10. California Code of Regulations, title 16, section 1769, states:

3 . . . .

4 (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

5 convicted of a crime, the board, in evaluating the rehabilitation of such person and  
6 his present eligibility for a license will consider the following criteria:

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

8 (2) Total criminal record.

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

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

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

12 11. California Code of Regulations, title 16, section 1770, states:

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

18 **COST RECOVERY**

19 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
20 the administrative law judge to direct a licentiate found to have committed a violation or  
21 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
22 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
23 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
24 may be included in a stipulated settlement.

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**FIRST CAUSE FOR DISCIPLINE**

**(Sep. 19, 2005 Conviction for Driving With a BAC of .08% or More on Jul. 9, 2005)**

13. Respondent subjected his pharmacist license to discipline under Code sections 490 and 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacist. The circumstances are as follows:

a. On September 19, 2005, in a criminal proceeding entitled *The People of the State of California vs. Terry Lee Hibbs*, in San Diego County Superior Court North County Division, Case Number CN198058, Respondent was convicted on his plea of guilty to violating Vehicle Code (VC) 23152 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. Respondent was also charged with violation of VC section 23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor, with a similar enhancement, which was dismissed pursuant to a plea bargain.

b. As a result of the conviction, on September 19, 2005, Respondent was granted three years summary probation and sentenced to serve 180 days in the San Diego County Jail, which was suspended. Respondent was also ordered to render five days of community service under the public service program, which was converted to 50 hours of volunteer work at any non-profit organization; pay restitution, fines, and fees; and attend and satisfactorily complete a first conviction DUI program and a Mothers Against Drunk Driving (MADD) Victim's Impact Panel.

c. The facts that led to the conviction are that on July 9, 2005, Respondent was arrested by an officer of the California Highway Patrol (CHP) in Oceanside, California for DUI. Respondent's subsequent chemical test results indicated a BAC of .19 percent.

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SECOND CAUSE FOR DISCIPLINE

(December 18, 2012 Criminal Conviction for DUI on August 11, 2012)

14. Respondent subjected his pharmacist license to discipline under Code sections 490 and 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacist. The circumstances are as follows:

a. On December 18, 2012, in a criminal proceeding entitled *The People of the State of California vs. Terry Lee Hibbs*, in San Diego County Superior Court North County Division, Case Number CN311690, Respondent was convicted on his plea of guilty to violating VC 23153, subdivision (b), driving with a BAC of 0.08 percent or more and causing bodily injury to another, a felony. Respondent admitted and the court found true the allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. Respondent also admitted and the court found true the allegation that pursuant to VC section 23560, that he had been convicted of DUI within the past ten years, based upon his conviction on September 19, 2005, in case number CN198058, detailed in paragraph 13, above. Respondent was also charged with violation of VC section 23153, subdivision (a), DUI and causing bodily injury to another, a felony, with similar enhancements, which was dismissed pursuant to a plea bargain.

b. As a result of the conviction, on December 18, 2012, Respondent was granted five years summary probation and sentenced to be committed to the custody of the San Diego County Sheriff for one day, with credit for one day served. Respondent was also ordered to pay restitution, fines, and fees; install a secure continuous remote alcohol monitor (SCRAM) bracelet within 24 hours for 45 days; and attend and satisfactorily complete a multiple conviction DUI program and a MADD Victim's Impact Panel.

c. The facts that led to the conviction are that on August 11, 2012, Respondent rear-ended another vehicle while driving along Centre City Parkway in Escondido, California. After the collision, the driver of the other vehicle complained of pain in his neck. The Escondido Fire Department transported Respondent to the Palomar Medical Center for evaluation where Respondent's blood test resulted in a BAC of .29 percent.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

3 15. Respondent subjected his pharmacist license to discipline under Code section  
4 4301, subdivision (h) in that on July 9, 2005 and August 11, 2012, he used alcohol to the extent  
5 and in a manner that was dangerous and injurious to himself and to the public, as described in the  
6 causes above, which are incorporated by reference.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Conviction of Alcohol Related Felony)**

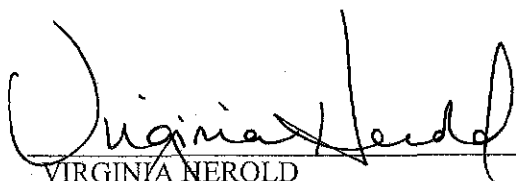
9 16. Respondent subjected his pharmacist license to discipline under Code section  
10 4301, subdivision (k) in that on December 18, 2012, he was convicted of a felony involving the  
11 use or consumption of alcohol.

12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacist License Number RPH 41315, issued to Terry  
16 L. Hibbs;
- 17 2. Ordering Terry L. Hibbs to pay the Board of Pharmacy the reasonable costs of the  
18 investigation and enforcement of this case, pursuant to Business and Professions Code section  
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.
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23  
24 DATED: 7/12/13

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

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