

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4632

13 **LARRY DAVID BADER JR.**
14 **232 Laurine Lane**
Fallbrook, CA 92028

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 114230**

17 Respondent.

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 14, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 114230 to Larry David Bader Jr. (Respondent). The Pharmacy
24 Technician Registration expired on February 28, 2013, and has not been 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 (Code) unless otherwise indicated.

1 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
2 suspended or revoked."

3 5. Section 4300.1 of the Code states:

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

8 STATUTORY PROVISIONS

9 6. Section 482 of the Code states:

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

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

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

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

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

20 8. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a
22 board within the department pursuant to law to deny an application for a license or to
23 suspend or revoke a license or otherwise take disciplinary action against a person who
24 holds a license, upon the ground that the applicant or the licensee has been convicted
25 of a crime substantially related to the qualifications, functions, and duties of the
26 licensee in question, the record of conviction of the crime shall be conclusive
27 evidence of the fact that the conviction occurred, but only of that fact, and the board
28 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."

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1 9. Section 4301 of the Code states:

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

6

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

12

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

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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.

. . . .

REGULATORY PROVISIONS

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

. . . .

(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 (1) Nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 4 (4) Whether the licensee has complied with all terms of parole, probation,
5 restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

12 **COSTS**

13 12. 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 10, 2012 Criminal Convictions for DUI and Hit & Run on April 26, 2012)**

21 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
22 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
23 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

- 24 a. On or about July 10, 2012, in a criminal proceeding entitled *People of the State*
25 *of California v. Larry David Bader Jr.*, in Riverside County Superior Court, case number
26 SWM1203459, Respondent was convicted on his plea of guilty to violating Vehicle Code section
27 23152, subdivision (a), driving under the influence of alcohol and/or drugs; Vehicle Code section
28 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more; and

1 Vehicle Code section 20002, subdivision (a), hit and run with property damage, misdemeanors.

2 b. As a result of the convictions, on or about July 10, 2012, Respondent was
3 granted 48 months summary probation, and committed to the custody of the Riverside County
4 Sheriff for 45 days, with credit for two days, to be served in the Sheriff's Labor Program.
5 Respondent was further ordered to complete a Drinking Driver Program, attend 44 Alcoholics
6 Anonymous meetings, pay fees and fines, and comply with DUI probation terms. Respondent
7 was also ordered to install an interlock device on his vehicle.

8 c. The facts that led to the convictions are that on or about the afternoon of April
9 26, 2012, a Riverside County Sheriff's deputy responded to a call of a non-injury hit and run
10 incident in the parking lot of a Temecula Wal-Mart. Upon arrival, the deputy contacted the
11 victim, witness, and a store security officer. The witness told the deputy that a red Ford Mustang
12 pulled into a parking spot near her car. The Mustang drove forward into a van, then backed up
13 and pulled forward again. This time the Mustang hit the vehicle parked next to the witness. The
14 Mustang backed up again, pulled forward and hit the car a second time. The driver of the
15 Mustang (Respondent) exited his vehicle and walked inside the Wal-Mart. A computer check
16 revealed that the vehicle was registered to Respondent, who the security officer identified as a
17 Wal-Mart employee. The security officer contacted Respondent and he was escorted to the
18 security office. Upon contact with Respondent, he told the deputy that he had consumed
19 prescription medications and a 32-ounce beer earlier in the day. Respondent drove to work, but
20 he was not aware he had hit any other vehicle. Respondent had difficulty maintaining his balance
21 while speaking with the deputy, and he was unable to perform the field sobriety tests as explained
22 and demonstrated by the deputy. Respondent was arrested for driving under the influence.
23 During booking, Respondent provided a blood sample which was analyzed with a BAC of .33
24 percent. Respondent also tested positive for benzodiazepines, fluoxetine, and lorfluoetine.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Dangerous Use of Alcohol)**

27 14. Respondent has subjected his registration to disciplinary action under section 4301,
28 subdivision (h) of the Code for unprofessional conduct in that on or about April 26, 2012,

1 Respondent was substantially impaired by alcoholic beverages and prescription medications, and
2 under their combined influence, he operated a motor vehicle in a manner that was dangerous to
3 himself and others, as detailed in paragraph 13, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Multiple Alcohol-Related Convictions)**

6 15. Respondent has subjected his registration to disciplinary action under sections 4301,
7 subdivision (k) of the Code for unprofessional conduct in that on or about July 12, 2012,
8 Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving
9 under the influence of alcohol), Vehicle Code section 23152, subdivision (b), (driving with a
10 BAC of .08 percent or more), and Vehicle Code section 20002, subdivision (a), hit and run, as
11 described in paragraph 13, above.

12 **PRAYER**


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

15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114230,
16 issued to Larry David Bader Jr.;

17 2. Ordering Larry David Bader Jr. to pay the Board of Pharmacy the reasonable costs of
18 the 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.

21
22
23 DATED: 7/22/13


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

SD2013805106