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

12 In the Matter of the Accusation Against:

Case No. 4958

13 **COURTNEY LEE FLEWELLEN**
12857 Frederick Street, Apt. 307
14 **Moreno Valley, CA 92553**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 66227**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 22, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 66227 to Courtney Lee Flewellen (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on August 31, 2015, 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 "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 license by
9 operation of law or by order or decision of the board or a court of law, the placement of a
10 license on a retired status, or the voluntary surrender of a license by a licensee shall not
11 deprive the board of jurisdiction to commence or proceed with any investigation of, or
12 action or disciplinary proceeding against, the licensee or to render a decision suspending
13 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 evaluate
15 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 a board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 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 the crime in order to fix the degree of

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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."

9. Section 4301 of the Code states:

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.

....

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

(l) 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 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:

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4 (b) When considering the suspension or revocation of a facility or a personal
5 license on the ground that the licensee or the registrant has been convicted of a crime,
6 the board, in evaluating the rehabilitation of such person and his present eligibility for
7 a license will consider the following criteria:

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

9 (2) Total criminal record.

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

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

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

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

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

22 **COSTS**

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

FIRST CAUSE FOR DISCIPLINE

(August 25, 2009 Criminal Conviction for DUI on April 17, 2009)

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

1 a. On or about August 25, 2009, in a criminal proceeding entitled *People of the*
2 *State of California v. Courtney Lee Flewellen*, in San Bernardino County Superior Court, case
3 number TSB902166, Respondent was convicted on his plea of nolo contendere to violating
4 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)
5 of .08 percent or more, a misdemeanor. The court dismissed an additional count of violating
6 Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol/drugs,
7 pursuant to a plea agreement.

8 b. As a result of the conviction, on or about August 25, 2009, Respondent was
9 granted 36 months probation, and ordered to serve 16 days in custody, with credit for one day, to
10 be served on weekends. Respondent was further ordered to complete a four-month First Offender
11 Alcohol Program, pay fees and fines, and comply with DUI probation terms.

12 c. The facts that led to the conviction were that on or about April 17, 2009, at
13 approximately 3:30 in the morning, a sheriff's deputy from the San Bernardino County Sheriff's
14 Department responded to a casino to meet with tribal officers who had detained Respondent for
15 driving under the influence. Upon contact with Respondent, the deputy observed that Respondent
16 emitted an odor of an alcoholic beverage, his eyes were bloodshot and watery, his speech was
17 slurred, and he had difficulty maintaining his balance. Respondent denied consuming alcohol,
18 but stated he had smoked marijuana approximately 20 minutes earlier. Respondent submitted to a
19 series of field sobriety tests which he was unable to perform as explained and demonstrated by
20 the deputy. Respondent was arrested for driving under the influence. He provided a breath
21 sample which was analyzed by the Alco Sensor with a BAC of .197 percent.

22 SECOND CAUSE FOR DISCIPLINE

23 (June 15, 2010 Criminal Conviction for DUI on January 23, 2010)

24 14. Respondent has subjected his registration to discipline under sections 490 and 4301,
25 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
26 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

27 a. On or about June 15, 2010, in a criminal proceeding entitled *People of the State*
28 *of California v. Courtney Lee Flewellen*, in Riverside County Superior Court, case number

1 RIM10003306, Respondent was convicted on his plea of guilty to violating Vehicle Code section
2 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
3 a misdemeanor. Respondent was also convicted of driving on a suspended license (Veh. Code, §
4 14601.2(a)). The court dismissed an additional count of violating Vehicle Code section 23152,
5 subdivision (a), driving under the influence of alcohol/drugs, pursuant to a plea agreement.

6 b. As a result of the conviction, on or about June 15, 2010, Respondent was
7 granted 48 months probation, and ordered to serve six days in custody, with credit for four days,
8 to be served on consecutive weekends. Respondent was further ordered to complete an 18-month
9 Multiple Offender Alcohol Program, pay fees and fines, and comply with DUI probation terms,
10 which included the installation of an ignition interlock device on his vehicle.

11 c. The facts that led to the conviction were that shortly after one in the morning,
12 on or about January 23, 2010, a deputy with the Riverside County Sheriff's Department was on
13 patrol in Moreno Valley when he observed Respondent drive by while drifting in and out of his
14 lane of travel. His registration was also expired. After conducting a traffic stop, the deputy made
15 contact with Respondent. Respondent's eyes were bloodshot and watery, his speech was slow
16 and slurred, and he had the odor of an alcoholic beverage and marijuana on his breath. The
17 deputy also observed that Respondent had a dry mouth, coated tongue, and dilated pupils.
18 Respondent stated he had consumed a 24 oz. beer earlier in the evening, and the marijuana odor
19 was from being a room where it was being smoked by others. Respondent submitted to a series
20 of field sobriety tests which he was unable to perform as explained and demonstrated by the
21 deputy. Respondent provided a breath sample which was analyzed by the preliminary alcohol
22 screening device with a BAC of .099 percent. Respondent was arrested for DUI.

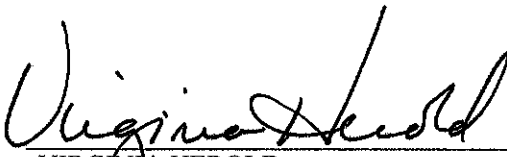
23 THIRD CAUSE FOR DISCIPLINE

24 **(Dangerous Use of Alcohol on April 17, 2009 and January 23, 2010)**

25 15. Respondent has subjected his registration to disciplinary action under section 4301,
26 subdivision (h) of the Code for unprofessional conduct in that on or about April 17, 2009, January
27 23, 2010, Respondent operated a motor vehicle while under the influence of alcohol and/or drugs,
28 as described in paragraphs 13 and 14, above.

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

DATED: 4/8/14 

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

SD2013706113