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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. 5074

13 **SHERRY ANN RECKLAU**
14 **12088 Short Street**
Lakeside, CA 92040

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 121743**

16 Respondent.

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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 October 3, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 121743 to Sherry Ann Recklau (Respondent). The Pharmacy
24 Technician Registration expired on February 28, 2014, 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 unless otherwise indicated.

1 dangerous or injurious to oneself, to a person holding a license under this chapter,
2 or to any other person or to the public, or to the extent that the use impairs the
3 ability of the person to conduct with safety to the public the practice authorized by
4 the license.

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6 (j) The violation of any of the statutes of this state, of any other state, or of
7 the United States regulating controlled substances and dangerous drugs.

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

11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of
13 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
14 United States Code regulating controlled substances or of a violation of the
15 statutes of this state regulating controlled substances or dangerous drugs shall be
16 conclusive evidence of unprofessional conduct. In all other cases, the record of
17 conviction shall be conclusive evidence only of the fact that the conviction
18 occurred. The board may inquire into the circumstances surrounding the
19 commission of the crime, in order to fix the degree of discipline or, in the case of
20 a conviction not involving controlled substances or dangerous drugs, to determine
21 if the conviction is of an offense substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of nolo contendere is deemed to be a conviction
24 within the meaning of this provision. The board may take action when the time
25 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
26 or when an order granting probation is made suspending the imposition of
27 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
28 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

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

(2) Total criminal record.

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

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

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

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

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

14 **DRUG**

15 11. Methamphetamine is a Schedule II controlled substance as designated by Health
16 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
17 and Professions Code section 4022.

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.

25 **FIRST CAUSE FOR DISCIPLINE**

26 **(June 25, 2008 Conviction for Driving with a BAC of .08 Percent or More on May 10, 2008)**

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

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1 a. On June 25, 2008, in a criminal proceeding entitled *The People of the*
2 *State of California vs. Sherry Ann Recklau*, in San Diego County Superior Court, East County
3 Regional Center, East County Division Case Number C280615, Respondent was convicted on
4 her plea of guilty to violating VC section 23152 subdivision (b), driving with a blood alcohol
5 concentration (BAC) of 0.08 percent or more, a misdemeanor. Respondent admitted and the
6 court found true the allegation that Respondent's BAC was .15 percent or more, a sentencing
7 enhancement pursuant to VC section 23578. A misdemeanor charge for violation of VC section
8 23152, subdivision (a), DUI, with a similar enhancement was dismissed pursuant to a plea
9 bargain.

10 b. As a result of the conviction, on June 25, 2008, Respondent was sentenced
11 to 180 days custody, which was suspended, with credit for one day served, and granted five years
12 summary probation subject to standard alcohol conditions. Respondent was ordered to serve 44
13 days under the public service program, with five days required to be rendered and the remaining
14 39 days may be served in lieu of fine. Respondent was also ordered to pay restitution, fines, and
15 fees, and attend and satisfactorily complete a first conviction DUI program for three months and
16 a Mothers Against Drunk Driving (MADD) Victim's Impact Panel.

17 c. The facts that led to the conviction are that on May 10, 2008, Respondent
18 was arrested for DUI and driving with a BAC of 0.08 percent or more.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Dec. 9, 2008 Conviction for Driving with a BAC of .08 Percent or More on Oct. 25, 2008)**

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

25 a. On December 9, 2008, in a criminal proceeding entitled *The People of the*
26 *State of California vs. Sherry Ann Recklau*, in San Diego County Superior Court, East County
27 Regional Center, East County Division Case Number C285761, Respondent was convicted on
28 her plea of guilty to violating VC section 23152 subdivision (b), driving with a BAC of 0.08

1 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation
2 that pursuant to VC section 23540, within ten years of violating VC section 23152, subdivision
3 (b), on May 10, 2008, mentioned above, she committed a separate violation of VC section
4 23152, subdivision (b), a misdemeanor resulting in a conviction on June 25, 2008, in case
5 number C280615, detailed in paragraph 15, above. Misdemeanor charges for violation of VC
6 sections 14601.2, subdivision (a), driving when privilege is suspended for a prior DUI
7 conviction, and 23152, subdivision (a), DUI, with a similar enhancement, were dismissed
8 pursuant to a plea bargain.

9 b. As a result of the conviction, on December 9, 2008, Respondent was
10 sentenced to 30 days custody, which was suspended, with credit for one day served, and granted
11 five years summary probation subject to standard alcohol conditions. Respondent was ordered to
12 serve five days under the public service program and pay restitution, fines, and fees. Respondent
13 was also ordered to attend and satisfactorily complete a multiple conviction DUI program and a
14 MADD Victim's Impact Panel.

15 c. The facts that led to the conviction are that on October 25, 2008,
16 Respondent went to a party and had a few drinks. Due to a disturbance at the party, Respondent
17 drove away with two intoxicated passengers. A deputy from the San Diego County Sheriff's
18 Department recognized Respondent's vehicle relative to his investigation of the party
19 disturbance and initiated an enforcement stop at Woodhaven Vista Avenue in Santee, California.
20 As the deputy approached Respondent's vehicle, he immediately smelled alcohol coming from
21 inside Respondent's vehicle and noticed Respondent's red, droopy, and watery eyes.
22 Respondent's speech was thick and slow. Respondent admitted to having consumed vodka
23 cranberry juice 45 minutes before the enforcement stop. Respondent failed the series of field
24 sobriety tests. During the preliminary alcohol screen, Respondent provided breath samples,
25 which upon testing indicated a BAC of .096 and .10 percent. Respondent was transported to the
26 Las Colinas Detention Facility, where she consented to two blood draws, which upon testing
27 both indicated a BAC of .09 percent.

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1 the extent and in a manner that was injurious to herself and to the public. The circumstances are
2 that:

3 a. On September 2, 2013, Respondent was driving her vehicle in the vicinity
4 of Broadway Avenue and First Street in El Cajon, California. An officer from the El Cajon
5 Police Department noticed that Respondent's vehicle's break lights were not maintained in good
6 working condition. Upon contact, Respondent admitted that her driver's license was suspended
7 for a prior conviction for driving under the influence (DUI). Respondent's passengers were three
8 probationers and her unrestrained two-year old son. During the search that followed, the officer
9 found a glass pipe with white residue and burn marks and a plastic baggie containing a white
10 crystalline substance, with a net weight of 7.71 grams, that tested presumptive positive for
11 methamphetamines. Respondent admitted to knowing about the presence of the
12 methamphetamine pipe and methamphetamine in her car. Respondent also admitted to using
13 methamphetamine in her home. Respondent further explained that she agreed to drive the three
14 probationers in her car and rent a room at a hotel in her name in exchange for methamphetamine.
15 Respondent was thereafter transported then booked into the Las Colinas Detention Facility.

16 b. On November 6, 2013, in a criminal proceeding entitled *The People of the*
17 *State of California vs. Sherry Ann Recklau*, in San Diego County Superior Court, East County
18 Regional Center, East County Division Case Number C333678, Respondent was convicted on
19 her plea of guilty to violating Penal Code section 415, subdivision (2), disturbing another person
20 by loud and unreasonable noise, and Vehicle Code (VC) sections 27360, subdivision (a), failure
21 as a parent, legal guardian, and driver to secure a child under eight years of age in a rear seat in a
22 child passenger restraint system, and 12500, subdivision (a), driving without a license,
23 infractions. Misdemeanor charges for violation of Health and Safety Code (HSC) section
24 11364.1, subdivision (a), possession of paraphernalia used for narcotics, and VC sections
25 14601.1, subdivision (a), 14601.2, subdivision (a), and 14601.5, subdivision (a), driving when
26 privilege suspended, with an allegation that pursuant to VC section 14601.2, subdivision (b),
27 within five years of violating VC sections 14601.1 (a), 14601.2 (a), and 14601.5 (a), on
28 November 20, 2009, mentioned below, she committed a separate violation of VC section

1 14601.2, subdivision (b), a misdemeanor resulting in a conviction on December, 22, 2009, in
2 case number C296563, detailed in paragraph 15, above, were dismissed pursuant to a plea
3 bargain.

4 **SEVENTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct –Violation of Drug Regulation Laws)**

6 19. Respondent subjected his pharmacy technician registration to discipline under
7 Code sections 490 and 4301, subdivision (j) in that on September 2, 2013, she violated HSC
8 section 11364.1, subdivision (a), possession of paraphernalia used for narcotics, a statute of the
9 State of California regulating controlled substances and dangerous drugs.

10 **DISCIPLINARY CONSIDERATION**

11 20. Pursuant to California Code of Regulations, title 16, section 1445, to determine
12 the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

13 21. On December 22, 2009, in a criminal proceeding entitled *The People of the State*
14 *of California vs. Sherry Ann Recklau*, in San Diego County Superior Court, Case Number
15 C296563, Respondent was convicted on her plea of guilty of violating VC 14601.2, subdivision
16 (b), knowingly operating a motor vehicle when driving privilege was suspended, a misdemeanor
17 that is substantially related to the qualifications, functions, and duties of a registered pharmacy
18 technician. As a result of the conviction, on December 22, 2009, Respondent was sentenced to
19 ten days in the San Diego County Jail and granted three years summary probation.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH
24 121743, issued to Sherry Ann Recklau;

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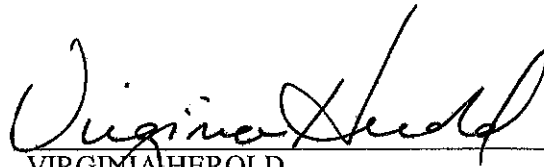
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2. Ordering Sherry Ann Recklau to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: _____

7/11/14



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

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