KAMALA D. HARRIS
Attorney General of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
LORRIE M. YOST
Deputy Attorney General
State Bar No. 119088
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-2271
Facsimile: (916) 327-8643
Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JUSTIN EHREN FOSTER** P.O. Box 13826 South Lake Tahoe, California 96151 **Pharmacy Technician Registration No. TCH 132870** Respondent.	Case No. 5317 **A C C U S A T I O N**

Virginia Herold ("Complainant") alleges:

PARTIES

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

Pharmacy Technician Registration

2. On or about July 17, 2013, the Board issued Pharmacy Technician Registration Number TCH 132870 to Justin Ehren Foster, also known as Justin Ehren Propps ("Respondent"). The pharmacy technician registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2016, unless renewed.

JURISDICTION

3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

4. Code section 4300.1 states:

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

STATUTORY AND REGULATORY PROVISIONS

5. Code section 4301 states, in pertinent part:

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.

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a 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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

8. Respondent is subject to disciplinary action pursuant to Code section 4301(l), on the grounds of unprofessional conduct, in that Respondent committed a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician, as set forth below.

a. On or about June 19, 2014, in a criminal proceeding entitled *People v. Justin Ehren Foster*, Superior Court of California, County of El Dorado, Case No. S14CRM0286, Respondent was convicted by the court on his plea of no contest to violating Vehicle Code section 23152(b) (driving under the influence of alcohol while having a blood alcohol level of .08% or higher), a misdemeanor, with one prior; and, a special allegation of Vehicle Code section 23578 (blood alcohol content of .15% or higher), in that Respondent's blood alcohol level was over .20%. The

circumstances of the crime are that on or about January 1, 2014, an officer with the California Highway Patrol responded to a report of a solo injury accident. The officer found Respondent lying in the roadway next to his vehicle. The officer observed that Respondent's eyes were extremely red and watery, he emitted the strong odor of an alcoholic beverage, his speech was very slurred, and his behavior erratic. Respondent was only capable of performing two field sobriety tests. A breath test was administered, revealing that Respondent's blood alcohol level was .29% and .279%. Respondent was taken to the hospital for evaluation and treatment.

b. On or about February 7, 2012, in a criminal proceeding entitled *People v. Justin Ehren Foster*, Superior Court of California, County of Ventura, Case No. 2011040836, Respondent was convicted by the court on his plea of guilty to violating Vehicle Code section 23152(b) (driving under the influence of alcohol while having a blood alcohol level of .08% or higher), a misdemeanor, with a special allegation of Vehicle Code section 23578 (blood alcohol content of .15% or higher). The circumstance of the crime is that on or about November 18, 2011, Respondent drove a vehicle while under the influence of an alcoholic beverage. His alcohol blood level was .26%/.24%/.25%.

SECOND CAUSE FOR DISCIPLINE

(One or More Convictions Involving the Use of Alcoholic Beverages)

9. Respondent is subject to disciplinary action pursuant to Code section 4301(k), on the grounds of unprofessional conduct, in that he has been convicted more than once of a crime involving the use of an alcoholic beverage, as more fully set forth in paragraph 8, above.

THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol Beverages in a Dangerous or Injurious Manner)

10. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that on or about January 1, 2014, and February 7, 2012, Respondent used alcoholic beverages in a manner dangerous or injurious to himself and others, as more fully set forth in paragraph 8, above.

///

///

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 132870, issued to Justin Ehren Foster, also known as Justin Ehren Propps;

2. Ordering Justin Ehren Foster, also known as Justin Ehren Propps, 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: 8/17/15

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

SA2014118259
11688056.doc