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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 5430

13 **KELLY MARIE SAX**  
14 **aka KELLY MARIE PEARSON**  
325 W. Third St.  
San Dimas, CA 91773

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

15 Pharmacy Technician Registration No. TCH  
47987

16 Respondent.

17  
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 June 19, 2003, the Board of Pharmacy ("Board") issued Pharmacy  
23 Technician Registration No. TCH 47987 to Kelly Marie Sax, aka Kelly Marie Pearson.  
24 ("Respondent"). The Pharmacy Technician Registration expired on June 30, 2015, and has not  
25 been renewed. On or about October 15, 2015, the Pharmacy Technician Registration was  
26 cancelled pursuant to Business and Professions Code section 4402, subdivision (e).

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following  
3 laws. All section references are to the Business and Professions Code ("Code") unless otherwise  
4 indicated.

5 4. Section 4300.1 of the Code states:

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

11 5. Section 4011 of the Code provides that "[t]he board shall administer and enforce this  
12 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform  
13 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and  
14 Safety Code)."

15 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very  
16 license issued may be suspended or revoked."

17 **STATUTORY AND REGULATORY PROVISIONS**

18 7. Section 4301 of the Code states, in pertinent part:

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

22 . . . .

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

28 . . . .

1           "(l) The conviction of a crime substantially related to the qualifications, functions, and  
2       duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
3       (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
4       ~~substances or of a violation of the statutes of this state regulating controlled substances or~~  
5       dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
6       record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
7       The board may inquire into the circumstances surrounding the commission of the crime, in order  
8       to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
9       or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
10      qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
11      a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
12      of this provision. The board may take action when the time for appeal has elapsed, or the  
13      judgment of conviction has been affirmed on appeal or when an order granting probation is made  
14      suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
15      the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
16      guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
17      indictment. . . ."

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

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

**COST RECOVERY**

26           9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
27      administrative law judge to direct a licentiate found to have committed a violation or violations of  
28      the licensing act to pay a sum not to exceed the reasonable costs of the investigation and

1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not  
2 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs  
3 may be included in a stipulated settlement.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

6 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),  
7 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
8 convicted of a crime substantially related to qualifications, functions, or duties of a registered  
9 pharmacy technician which to a substantial degree evidence her present or potential unfitness to  
10 perform the functions authorized by her registration in a manner consistent with the public health,  
11 safety, or welfare, as follow:

12 a. On or about December 19, 2014, after pleading nolo contendere, Respondent was  
13 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)  
14 [driving with a 0.08% or more, by weight, of blood alcohol concentration ("BAC")], with a  
15 special allegation of Vehicle Code section 23578 [BAC of 0.15% or more], in the criminal  
16 proceeding entitled *The People of the State of California v. Kelly Marie Pearson aka Kelly Marie*  
17 *Sax* (Super. Ct. L.A. County, 2014, No. 4JB06260.) The Court placed Respondent on three years  
18 summary probation with terms and conditions, ordered her to perform 21 days community labor,  
19 ordered her to complete a 9-Month First Offender Alcohol and Other Drug Program and a Victim  
20 Impact Program of Mothers Against Drunk Driving, and ordered her to pay fines.

21 b. The circumstances underlying the conviction are that on or about July 6, 2014, a  
22 Glendora Police Department officer noticed Respondent driving erratically. The officer  
23 conducted a traffic stop and when he spoke with Respondent, he observed that she had red,  
24 watery eyes, her speech was slow and slurred, and the odor of alcohol was emitting from her  
25 breath and person. Respondent was unable to satisfactorily complete field sobriety tests and her  
26 BAC level was 0.31%.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

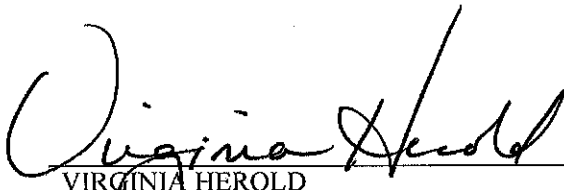
3 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),  
4 on the grounds of unprofessional conduct, in that on or about July 6, 2014, Respondent  
5 administered alcoholic beverage to herself to the extent or in a manner as to be dangerous or  
6 injurious to herself or others. Complainant refers to and by this reference incorporates the  
7 allegations set for above paragraph 10, subparagraph b, inclusive, as though set forth fully.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 47987, issued  
12 to Respondent;
- 13 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
14 enforcement of this case, pursuant to section 125.3 of the Code; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16  
17  
18 DATED: 1/25/16

  
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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