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

11 In the Matter of the Accusation Against:

Case No. 5477

12 **DANIEL YOUNG OH**
13 **124 Roadrunner**
14 **Irvine, CA 92603**

A C C U S A T I O N

15 **Intern Pharmacist Registration No. INT 29660**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 17, 2012, the Board of Pharmacy issued Intern Pharmacist
22 Registration Number INT 29660 to Daniel Young Oh (Respondent). The Intern Pharmacist
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on May 31, 2015, unless 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 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
5 license by operation of law or by order or decision of the board or a court of law,
6 the placement of a license on a retired status, or the voluntary surrender of a
7 license by a licensee shall not deprive the board of jurisdiction to commence or
8 proceed with any investigation of, or action or disciplinary proceeding against, the
9 licensee or to render a decision suspending or revoking the license.

8 STATUTORY PROVISIONS

9 6. Section 480 of the Code states:

10 (a) A board may deny a license regulated by this code on the grounds that
11 the applicant has one of the following:

12 (1) Been convicted of a crime. A conviction within the meaning of this
13 section means a plea or verdict of guilty or a conviction following a plea of nolo
14 contendere. Any action that a board is permitted to take following the
15 establishment of a conviction may be taken when the time for appeal has elapsed,
16 or the judgment of conviction has been affirmed on appeal, or when an order
17 granting probation is made suspending the imposition of sentence, irrespective of a
18 subsequent order under the provisions of Section 1203.4 of the Penal Code.

19 (2) Done any act involving dishonesty, fraud, or deceit with the intent to
20 substantially benefit himself or herself or another, or substantially injure another.

21 (3) (A) Done any act that if done by a licentiate of the business or profession
22 in question, would be grounds for suspension or revocation of license.

23 (B) The board may deny a license pursuant to this subdivision only if the
24 crime or act is substantially related to the qualifications, functions, or duties of the
25 business or profession for which application is made.

26 (b) Notwithstanding any other provision of this code, no person shall be
27 denied a license solely on the basis that he or she has been convicted of a felony if
28 he or she has obtained a certificate of rehabilitation under Chapter 3.5
(commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that
he or she has been convicted of a misdemeanor if he or she has met all applicable
requirements of the criteria of rehabilitation developed by the board to evaluate the
rehabilitation of a person when considering the denial of a license under
subdivision (a) of Section 482.

(c) Notwithstanding any other provisions of this code, a person shall not be
denied a license solely on the basis of a conviction that has been dismissed
pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant

1 who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a,
2 or 1203.41 of the Penal Code shall provide proof of the dismissal.

3 (d) A board may deny a license regulated by this code on the ground that the
4 applicant knowingly made a false statement of fact required to be revealed in the
5 application for the license.

6 7. Section 482 of the Code states:

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

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

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

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

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

17 9. Section 493 of the Code states:

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

As used in this section, "license" includes "certificate," "permit,"
"authority," and "registration."

10. 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

1 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
2 is not limited to, any of the following:

3

4 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
5 deceit, or corruption whether the act is committed in the course of relations as a
6 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

7 (g) Knowingly making or signing any certificate or other document that
8 falsely represents the existence or nonexistence of a state of facts.

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

15

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

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

21 (l) The conviction of a crime substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. The record of conviction of
23 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
24 States Code regulating controlled substances or of a violation of the statutes of this
25 state regulating controlled substances or dangerous drugs shall be conclusive
26 evidence of unprofessional conduct. In all other cases, the record of conviction
27 shall be conclusive evidence only of the fact that the conviction occurred. The
28 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.

. . . .

1 (p) Actions or conduct that would have warranted denial of a license.

2 **REGULATORY PROVISIONS**

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

4

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

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

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

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

23 **COST RECOVERY**

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

28 **DRUGS**

14. Marijuana is a Schedule I controlled substance pursuant to Health and Safety Code
section 11054, subdivision (d).

1 FIRST CAUSE FOR DISCIPLINE

2 (April 10, 2015 Criminal Conviction for DUI on August 23, 2014)

3 15. Respondent has subjected his license to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
5 qualifications, duties, and functions of a pharmacist intern. The circumstances are as follows:

6 a. On or about April 10, 2015, in a criminal proceeding entitled *People of the State of*
7 *California v. Daniel Young Oh*, Orange County Superior Court, case number 14HM07469,
8 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
9 driving under the influence of alcohol and 23152(b), driving with a blood alcohol content of .08
10 percent or more, both misdemeanors.

11 b. As a result of the conviction, Respondent was placed on probation for five years,
12 sentenced to ninety days in custody, ordered to pay fines, required to complete an outpatient
13 program, MADD Victim's Impact Panel, and a 18 month multiple offender alcohol program.

14 c. The circumstances of the conviction are that on or about August 23, 2014, officers
15 were dispatched to a call of a possible DUI driver. The officers observed a vehicle that matched
16 the description given by dispatch and watched it pull into the parking lot and turns towards a Del
17 Taco restaurant. Officers observed that the vehicle almost collided with the raised curb as it
18 approached the drive-thru. Officers activated their emergency lights, siren, and air horn as the
19 vehicle continued to move forward through the drive-thru. The vehicle did not react or stop to the
20 lights and siren. Once the vehicle came to a stop at the drive-thru menu, the officers made
21 contact with the driver, who was identified as Respondent.

22 d. Officers noticed a strong smell of alcoholic beverage emitting from Respondent's
23 breath and person, and Respondent had bloodshot and watery eyes. Respondent told officers that
24 he felt "perfectly fine" but he failed the Field Sobriety tests. Respondent's blood alcohol content
25 was .17. Respondent was arrested for driving under the influence. During the search of
26 Respondent's vehicle, officers discovered a container with marijuana. Respondent told officers
27 that he did not have a valid medical recommendation to possess or smoke marijuana.
28

SECOND CAUSE FOR DISCIPLINE

(August 14, 2007 Criminal Conviction for Public Intoxication on April 8, 2007)

16. Respondent has subjected his license 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 pharmacist intern. The circumstances are as follows:

a. On or about August 14, 2007, in a criminal proceeding entitled *People of the State of California v. Daniel Oh*, Yolo County Superior Court, case number 07-2467, Respondent was convicted on his plea of no contest to violating Penal Code section 647(f), public intoxication, a misdemeanor.

b. As a result of the conviction, Respondent was placed on informal probation for one year, ordered to pay fines and fees, and sentenced to fifteen days in custody. Respondent's probation was terminated unsuccessfully on April 16, 2008 as a result of a conviction for driving under the influence in Yolo County Superior court case number 08-959. On or about April 29, 2014, Respondent's conviction was dismissed pursuant to Penal Code section 1203.4/1203.4a.

c. The circumstances of the conviction are that on or about April 8, 2007, officers were dispatched to a report of a "man down" in the street. Upon arrival, officers found Respondent lying on his back with his head in the gutter and towel over his head. Officers called out to Respondent several times and shook his shoulders but Respondent was unresponsive and appeared unconscious. Officers observed an odor of alcohol on Respondent. Officers were able to wake Respondent by rubbing him on the sternum. Upon awaking, Respondent attacked one of the officers by swinging his arms and kicking. Officers struggled to restrain Respondent and had to use a taser to control him. Respondent smelled of alcohol and urine and his crotch area of his pants were wet. Respondent did not know his age, his address or social security number. Respondent told officers that he was out partying but did not know how much alcohol he drank or how he ended up lying in a gutter with a towel over his head.

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THIRD CAUSE FOR DISCIPLINE

(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)

17. Respondent has subjected his license to disciplinary action under section 4301, subdivision (h) of the Code for use of alcohol in a dangerous manner, in that on or about April 23, 2013, Respondent drove a vehicle while under the influence of an alcoholic beverage, and on April 8, 2007, Respondent was intoxicated to the point that he was unresponsive to officers and upon regaining consciousness, became violent with officers. Both acts posed a serious risk of injury and/or death to himself or to the public, as detailed in paragraphs 15 and 16, above, and which are incorporated herein by reference.

FOURTH CAUSE FOR DISCIPLINE

(Conviction of More than One Misdemeanor Involving the Use or Consumption of Alcohol)

18. Respondent has subjected his license to disciplinary action under section 4301, subdivision (k) of the Code in that Respondent has been convicted of three misdemeanors involving the use, consumption or self-administration of alcoholic beverage, as follows:

a. On or about April 10, 2015, in a criminal proceeding entitled *People of the State of California v. Daniel Young Oh*, Orange County Superior Court, case number 14HM07469, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a), driving under the influence of alcohol, a misdemeanor, as set forth in paragraph 15 (First Cause for Discipline), above.

b. On or about August 14, 2007, in a criminal proceeding entitled *People of the State of California v. Daniel Young Oh*, Yolo County Superior Court, case number 07-2467, Respondent was convicted on his plea of no contest to violating Penal Code section 647(f), public intoxication, a misdemeanor, as set forth in paragraph 16 (Second Cause for Discipline), above.

c. On or about April 16, 2008, in a criminal proceeding entitled *People of the State of California v. Daniel Young Oh*, Yolo County Superior Court, case number 08-959, Respondent was convicted on his plea of no contest to violating Vehicle Code section 23152(b), driving with a blood alcohol content of .08 percent or more, as referenced in paragraph 22 (Disciplinary Considerations), below.

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Knowingly Making a False Statement of Fact)**

3 19. Respondent has subjected his license to disciplinary action under section 4301,
4 subdivisions (f) and (g) of the Code for dishonest acts in that he knowingly made a false
5 statement of fact on his application for licensure. The circumstances are as follows:

6 a. On or about May 8, 2012, Respondent signed an application for an Intern License
7 with the Board of Pharmacy. On the application, Respondent falsely marked “no” to the question
8 asking if he had ever been convicted of a crime. However, on or about August 14, 2007, in a
9 criminal proceeding entitled *People of the State of California v. Daniel Young Oh*, Yolo County
10 Superior Court, case number 07-2467, Respondent was convicted on his plea of no contest to
11 violating Penal Code section 647(f), public intoxication, a misdemeanor (as set forth in the
12 Second Cause for Discipline). Respondent failed to report this conviction to the Board and the
13 Board did not learn of the conviction until 2015, well after it licensed Respondent.

14 **SIXTH CAUSE FOR DISCIPLINE**

15 **(Acts that Would have Warranted the Denial of Licensure)**

16 20. Respondent has subjected his license to disciplinary action under section 4301,
17 subdivision (p) of the Code for acts that would have warranted the denial of a license under
18 Business and Professions Code section 480(d) for knowingly making a false statement of fact that
19 is required to be revealed in the application, as set forth in paragraph 19 (Fifth Cause for
20 Discipline), above.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Illegal Possession of Controlled Substance)**

23 21. Respondent has subjected his license to disciplinary action under section 4301,
24 subdivision (j) of the Code in that Respondent illegally possessed controlled substances,
25 marijuana, on August 23, 2014, in violation of California and United States statutes regulating
26 controlled substances, as set forth in paragraph 15, above (First Cause for Discipline).

1 **DISCIPLINE CONSIDERATIONS**

2 22. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about May 20, 2013, in a prior action, the Board of Pharmacy
4 issued Citation Number CI 2012 53246 for violations of Business and Professions Code section
5 4301, subdivisions (g) for knowingly making or signing a certificate or other document that
6 falsely represents the existence or nonexistence of facts; subdivision (h) for using alcohol in an
7 dangerous manner; subdivision (l) for sustaining a conviction that is substantially related to the
8 practice of pharmacy; and subdivision (q) for engaging in conduct that subverts or attempts to
9 subvert an investigation of the Board. The Citation ordered Respondent to pay a fine in the
10 amount of \$5,000.00. The circumstances are as follows:

11 a. On or about May 8, 2012, Respondent signed an application for an Intern License
12 with the Board of Pharmacy. On the application, Respondent falsely marked "no" to the question
13 asking if he had ever been convicted of a crime. However, Respondent was convicted of Vehicle
14 Code section 23152(b), driving with a blood alcohol content of .08 percent or more on April 16,
15 2008, a misdemeanor. As a result of his conviction, Respondent was placed on probation for
16 three years, fined, sentenced to six days in custody, and ordered to complete a nine month First
17 Offender DUI Program. Respondent failed to disclose his April 16, 2008 conviction on his
18 application.

19 b. That Citation is now final and is incorporated by reference as if fully set forth.

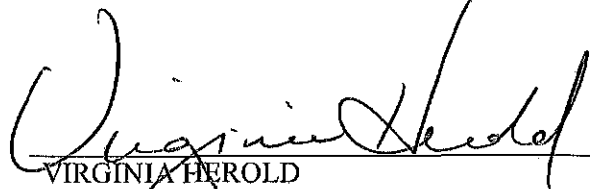
20 **PRAYER**

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

- 23 1. Revoking or suspending Intern Pharmacist Registration Number INT 29660, issued to
24 Daniel Young Oh;
- 25 2. Ordering Daniel Young Oh to pay the Board of Pharmacy the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 125.3;

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

DATED: 6/13/15 

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

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