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

11 In the Matter of the Accusation Against:

Case No. 5589

12 **JOVEN PONCE ALVAREZ**
13 **2049 Villagetree Drive**
San Jose, CA 95791

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **121288**
Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy.

21 2. On or about February 21, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 121288 to Joven Ponce Alvarez (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on March 31, 2017, unless renewed.

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JURISDICTION

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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 unless otherwise indicated.

4 4. Section 4300(a) of the Code provides every license issued by the Board may be
5 suspended or revoked.

6 5. Section 4300.1 of the Code states:

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

12 6. Section 4301 of the Code states:

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

16 . . .

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

22 . . .

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

25 . . .

26 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
27 of a licensee under this chapter.

28 . . .

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

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

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

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

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of Substantially Related Crime)**

3 10. Respondent is subject to disciplinary action under section 4301(l) and section 490 of
4 the Code, by reference to California Code of Regulations, title 16, section 1770, for the
5 conviction of a substantially related crime, in that on or about June 2, 2015, in the Alameda
6 County Superior Court criminal case entitled *People v. Joven Ponce Alvarez*, Case No. 150919-3,
7 Respondent was convicted by plea of no contest of violating Vehicle Code section 23152(b),
8 (driving with a blood alcohol level in excess of .08%), a misdemeanor. The circumstances are as
9 follows:

10 a. On or about February 16, 2015, at approximately 2:12 a.m. California Highway Patrol
11 Officers observed Respondent's vehicle weaving in traffic. An enforcement stop was initiated and
12 the vehicle was pulled over. Upon contact with Respondent, the officers observed signs of
13 intoxication including red/watery eyes, slurred speech and the odor of an alcoholic beverage
14 emanating from the vehicle. Respondent also stated that he had consumed alcohol prior to
15 driving. Respondent was unable to perform Field Sobriety Tests explained and demonstrated by
16 the officers. Respondent agreed to a preliminary alcohol screening (PAS) which showed a breath
17 alcohol content of 0.123% at 2:26 a.m. and 0.129% at 2:28 a.m.

18 b. A subsequent chemical breath test showed a blood alcohol content of .13% at 3:13
19 a.m. and again at 3:16 a.m.

20 c. Respondent was sentenced as follows: Three (3) years probation, one (1) day in jail,
21 two (2) days of service in the Alameda County Sheriff's Weekend Alternative Program, enroll
22 and complete a three (3) month First Offender DUI program, attend two (2) Narcotics
23 Anonymous meetings per week for three (3) months and required to pay a fine of \$390.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Self-Administration of Controlled Substance and/or Alcohol)**

3 11. Respondent is subject to discipline under section 4301, subdivision (h) and/or 4301
4 subdivision (j) of the Code, in that Respondent, as described in paragraph 10 above, administered
5 alcohol to an extent or in a manner as to be dangerous to himself and/or the public.

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7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct)**

9 12. Respondent is subject to discipline under section 4301 of the Code, in that
10 Respondent, as described in paragraph 10 above, engaged in unprofessional conduct.

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12 **PRAYER**

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 121288,
16 issued to Joven Ponce Alvarez;
- 17 2. Ordering Joven Ponce Alvarez to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

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22
23 DATED: 2/5/16

Virginia Herold

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25 VIRGINIA K. HEROLD
26 Executive Officer
27 California State Board of Pharmacy
27 State of California
28 *Complainant*