KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Senior Assistant Attorney General
MARK D. GREENBAUM
Supervising Deputy Attorney General
State Bar No. 138213
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2579
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **DOUGLAS JEFFORY MOHAN** **2122 West Avenue M4** **Palmdale, CA 93551** **Pharmacy Technician License** **No. TCH 126532** Respondent.	Case No. 5638 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about September 20, 2012, the Board of Pharmacy issued Pharmacy Technician License Number TCH 126532 to Douglas Jeffory Mohan (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300(a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code 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 PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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> (a) Considering the denial of a license by the board under Section 480; or
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> (b) Considering suspension or revocation of a license under Section 490.
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> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

8. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

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9. 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 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.

. . . .

(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. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) 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.

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

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

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

11. 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.

COSTS

12. Section 125.3 of the Code 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

(April 21, 2015 Criminal Conviction for DUI on February 1, 2015)

13. Respondent has subjected his registration to discipline under sections 490 and 4301(1) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On April 21, 2015, in a criminal proceeding entitled *People of the State of California v. Dogulas Jeffory Mohan,* in Los Angeles County Superior Court, case number 5AV01184, Respondent was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(b), driving with a blood alcohol concentration (BAC) of .08 or more, a misdemeanor. Respondent admitted, and the court found true the special allegation that Respondent's BAC was .15 percent or more within the meaning of Vehicle Code section 23578. Pursuant to a plea agreement, the court dismissed an additional count of violating Vehicle Code section 23152(a), driving under the influence, as well as the special allegation that Respondent refused to submit to a chemical test pursuant to Vehicle Code section 23577.

b. As a result of the conviction, Respondent was sentenced to serve two days in the Los Angeles County Jail, with pre-custody credit for two days, and he was granted summary

probation for three years. Respondent was ordered to perform 10 days of community labor, complete a nine-month licensed Alcohol and Other Drug Education and Counseling Program, a Hospital and Morgue Program, and a MADD Victim Impact Panel session, pay fines, fees and restitution to the victim, and comply with the DUI probation terms.

c. The facts that led to the conviction are that at approximately 11:00 p.m. on February 1, 2015, a road in Lancaster had been closed by the Los Angeles County Sheriff's Department while they investigated a severe traffic collision involving a possible fatality. Orange cones had been placed across the road for all westbound lanes near the vicinity of the traffic collision. A volunteer with a flashlight was assisting by directing traffic; his privately-owned vehicle was parked approximately 15 feet from the orange cones in a closed section of the road. Three electronic flares were magnetically attached to the volunteer's vehicle, and the hazard lights were flashing. A deputy at the scene described hearing a loud collision; he observed a large amount of smoke, and the volunteer's vehicle and a gray SUV were spinning. The deputy ran to the collision to check on the driver (Respondent). When the deputy made contact with Respondent, he smelled a strong odor of alcohol on Respondent's breath and body, his speech was extremely slurred and mumbled, his eyes were bloodshot and watery, and he swayed and staggered when he exited his vehicle. The volunteer stated as Respondent approached the orange cones at a high rate of speed, he attempted to get Respondent's attention with his flashlight. Respondent drove through the cone pattern without slowing down and collided with the volunteer's vehicle. Respondent submitted to a series of field sobriety tests which he was unable to complete as explained and demonstrated by the deputy. Because Respondent was unable to maintain his balance, the tests were discontinued for Respondent's safety. Respondent provided two breath samples that were analyzed by the preliminary alcohol screening device with a BAC of .269 and .274, respectively. Respondent was arrested for driving under the influence. During booking, Respondent refused to provide any further samples for testing.

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SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

14. Respondent has subjected his registration to disciplinary action under section 4301(h) of the Code for unprofessional conduct in that on or about February 1, 2015, as described in paragraph 13, above, Respondent operated a motor vehicle while significantly impaired by alcohol, and caused a collision.

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 License Number TCH 126532, issued to Douglas Jeffory Mohan;

2. Ordering Douglas Jeffory Mohan 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;

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

DATED: 3/19/16

Virginia Herold

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

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