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

12 In the Matter of the Accusation Against:

Case No. 5650

13 **DANIEL JAMES LEARN**
14 **24470 Corte Descanso**
Murrieta, CA 92562

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **42139**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about April 5, 2002, the Board issued Pharmacy Technician Registration
24 Number TCH 42139 to Daniel James Learn (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 July 31, 2017, unless renewed.

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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(a) of the Code provides that every license issued may be suspended or
6 revoked.

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

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

20 7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
21 revoke a license when it finds that the licensee has been convicted of a crime substantially related
22 to the qualifications, functions or duties of a licensed vocational nurse.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a board
25 within the department pursuant to law to deny an application for a license or to suspend
26 or revoke a license or otherwise take disciplinary action against a person who holds a
27 license, upon the ground that the applicant or the licensee has been convicted of a crime
28 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.

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

3 9. Section 4301 of the Code states:

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

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

13 (l) The conviction of a crime substantially related to the qualifications, functions,
14 and duties of a licensee under this chapter. The record of conviction of a violation of
15 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
16 regulating controlled substances or of a violation of the statutes of this state regulating
17 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
18 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
19 the fact that the conviction occurred. The board may inquire into the circumstances
20 surrounding the commission of the crime, in order to fix the degree of discipline or, in the
21 case of a conviction not involving controlled substances or dangerous drugs, to determine
22 if the conviction is of an offense substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. A plea or verdict of guilty or a conviction
24 following a plea of nolo contendere is deemed to be a conviction within the meaning of
25 this provision. The board may take action when the time for appeal has elapsed, or the
26 judgment of conviction has been affirmed on appeal or when an order granting probation
27 is made suspending the imposition of sentence, irrespective of a subsequent order under
28 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, 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).

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

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

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

13 **COST RECOVERY**

14 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate found to have committed a violation or violations of
16 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
17 enforcement of the case.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(October 1, 2014 Criminal Convictions for Driving While Under the Influence 20 of Alcohol on August 10, 2014)**

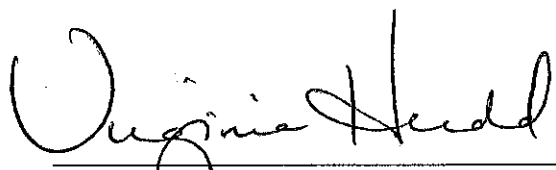
21 13. Respondent is subject to disciplinary action under sections 490 and 4301,
22 subdivision (l) of the Code that she was convicted of a crime that is substantially related to the
23 qualifications, functions and duties of a Pharmacist. The circumstances are as follows:

24 a. On or about October 1, 2014, in a criminal proceeding entitled *The People of the*
25 *State of California v. Daniel James Learn*, in Riverside County Superior Court, case number
26 SWM1406757, Respondent was convicted on his plea of guilty to violating Vehicle Code section
27 23152, subdivision (a) driving under the influence of alcohol and Vehicle Code section 23152,
28 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more,
misdemeanors. Respondent admitted and the court found true the allegations that his BAC was
.15 percent or more within the meaning of Vehicle Code section 23578.

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- 2. Ordering Daniel James Learn 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: 12/21/15



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

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