

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KAREN L. GORDON  
Deputy Attorney General  
4 State Bar No. 137969  
600 West Broadway, Suite 1800  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2073  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

12  
13 In the Matter of the Accusation Against:

Case No. 5684

14 **MELISSA JIN KOGER**  
15 **45 Donovan**  
**Irvine, CA 92620**

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

16 **Intern Pharmacist License No. INT 28760**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 21, 2011, the Board of Pharmacy issued Intern Pharmacist  
24 License Number INT 28760 to Melissa Jin Koger (Respondent). The Intern Pharmacist License  
25 was in full force and effect at all times relevant to the charges brought herein and will expire on  
26 May 31, 2016, unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be  
6 suspended or 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 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 7. Section 493 of the Code states:

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

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

27 ///

28 ///

1 8. Section 4301 of the Code states:

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

6 . . . .

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

12 . . . .

13 (i) 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  
21 the case of a conviction not involving controlled substances or dangerous drugs, to  
22 determine if the conviction is of an offense substantially related to the qualifications,  
23 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a  
24 conviction following a plea of nolo contendere is deemed to be a conviction within the  
25 meaning of this provision. The board may take action when the time for appeal has  
26 elapsed, or the judgment of conviction has been affirmed on appeal or when an order  
27 granting probation is made suspending the imposition of sentence, irrespective of a  
28 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

9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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.

1 10. 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  
4 Code, a crime or act shall be considered substantially related to the qualifications,  
5 functions or duties of a licensee or registrant if to a substantial degree it evidences  
6 present or potential unfitness of a licensee or registrant to perform the functions  
7 authorized by his license or registration in a manner consistent with the public health,  
8 safety, or welfare.

#### 6 COSTS

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

#### 13 FIRST CAUSE FOR DISCIPLINE

#### 14 (November 1, 2013 Criminal Conviction for DUI on July 4, 2013)

15 12. Respondent has subjected her license to discipline under sections 490 and 4301,  
16 subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the  
17 qualifications, duties, and functions of an intern pharmacist. The circumstances are as follows:

18 a. On or about November 1, 2013, in a criminal proceeding entitled *People of the*  
19 *State of California v. Melissa Jin Koger*, in Orange County Superior Court, case number  
20 13HM08050, Respondent was convicted on her plea of nolo contendere to violating Vehicle  
21 Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08  
22 percent or more, a misdemeanor, and that her BAC was .20 percent or more, pursuant to Vehicle  
23 Code section 23538, subdivision (b)(2). As a result of a plea agreement, the court dismissed an  
24 additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)).

25 b. As a result of the conviction, Respondent was sentenced to serve one day in the  
26 Orange County Jail, with credit for one day, and granted informal probation for three years.  
27 Respondent was ordered to complete a nine-month Level 2 First Offender Alcohol Program,  
28 complete a total of 89 days of community service, and pay fees and victim restitution.

1 c. The facts that led to the conviction are that shortly after two in the morning, on  
2 July 4, 2013, the Irvine Police Department responded to a report of a traffic collision. Officers  
3 spoke to Respondent who stated she was traveling at approximately 60 miles per hour when she  
4 rear-ended another vehicle because she was too drunk to see it. Respondent admitted consuming  
5 alcohol prior to operating her vehicle. Respondent had a strong odor of alcohol emitting from her  
6 person, her eyes were bloodshot and watery, her speech was slurred and incoherent, and she had  
7 difficulty maintaining her balance. Respondent was unable to complete the field sobriety tests as  
8 explained and demonstrated by the officer. Respondent provided a breath sample that was  
9 analyzed by the preliminary alcohol screening device with a BAC of .249 percent. Respondent  
10 was arrested for driving under the influence. During booking, she provided a blood sample that  
11 was analyzed with a BAC of .27 percent.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol on July 4, 2013)**

14 13. Respondent has subjected her license to discipline under section 4301, subdivision (h)  
15 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous  
16 or injurious to herself and to the public, in that she operated a motor vehicle on July 4, 2013 while  
17 significantly impaired by alcohol, and caused a collision with another motorist, as described in  
18 paragraph 12, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Alcohol on August 1, 2015)**

21 14. Respondent has subjected her license to discipline under section 4301, subdivision (h)  
22 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous  
23 or injurious to herself and to the public. The circumstances are as follows:

24 a. On or about the evening of August 1, 2015, the California Highway Patrol  
25 (CHP) responded to a report of a single vehicle collision in Costa Mesa. The investigation  
26 determined that Respondent had driven off the road, collided with a metal light pole, then drove  
27 over a sprinkler head. Her vehicle had moderate collision damage and was situated in a  
28 dirt/vegetation area on the transition ramp from SR-55 to I-405. The officer observed that

1 Respondent had a strong odor of alcohol on her breath and person, her eyes were bloodshot and  
2 watery, her speech was slow and slurred, and she appeared confused. Respondent was unable to  
3 complete the field sobriety tests as explained and demonstrated by the officer. Respondent  
4 provided two breath samples which were analyzed with a BAC of .20 and .21, respectively.  
5 Respondent was arrested. CHP officers learned that Respondent had been in another collision  
6 just prior to driving off the road. The victim of that collision reported that Respondent had rear-  
7 ended her vehicle while driving on SR-55. Both she and Respondent pulled over onto the  
8 shoulder of the road. The victim made contact with Respondent at Respondent’s vehicle, and  
9 informed Respondent that she had called 9-1-1 to report the collision. After a brief conversation,  
10 Respondent fled the scene without exchanging any information. The victim was able to identify  
11 Respondent as the person responsible for the hit and run collision.

12                 b.     On August 4, 2015, in a criminal proceeding entitled *People of the State of*  
13 *California v. Melissa Jin Koger*, in Orange County Superior Court, case number 15WM09834,  
14 Respondent entered a plea of not guilty to charges of driving under the influence (Veh. Code, §  
15 23152(a)), driving with a blood alcohol concentration (BAC) of .08 percent or more (Veh. Code,  
16 § 23152(b)), hit and run with property damage (Veh. Code, § 20002(a)), and driving with a BAC  
17 of .01 percent or greater while on probation for DUI (Veh. Code, § 23154(a)), misdemeanors.  
18 The charges are still pending.

19                                 **PRAYER**

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

- 22                 1.     Revoking or suspending Intern Pharmacist License Number INT 28760, issued to  
23 Melissa Jin Koger;
- 24                 2.     Ordering Melissa Jin Koger to pay the Board of Pharmacy the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3;

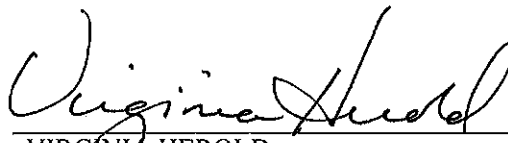
27                 ///  
28                 ///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

DATED:

11/23/15



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

SD2015802989  
81196584.doc