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

12 In the Matter of the Accusation Against:

Case No. 5777

13 **SAMANTHA NICOLE SCHMIDT**
14 **1019 Dornajo Way #253**
15 **Sacramento, CA 95825**

ACCUSATION

16 **Pharmacy Technician Registration No. TCH**
17 **114184**

Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about October 20, 2011, the Board issued Pharmacy Technician Registration
23 Number TCH 114184 to Samantha Nicole Schmidt (“Respondent”). The pharmacy technician
24 registration was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2017, unless renewed.

26 **JURISDICTION/STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code (“Code”) unless otherwise
indicated.

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4. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Code section 4300.1 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.

6. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . 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.

....

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

(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

1 evidence of unprofessional conduct. In all other cases, the record of conviction shall
2 be conclusive evidence only of the fact that the conviction occurred. The board may
3 inquire into the circumstances surrounding the commission of the crime, in order to
4 fix the degree of discipline or, in the case of a conviction not involving controlled
5 substances or dangerous drugs, to determine if the conviction is of an offense
6 substantially related to the qualifications, functions, and duties of a licensee under this
7 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere is deemed to be a conviction within the meaning of this provision. The
9 board may take action when the time for appeal has elapsed, or the judgment of
10 conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under
12 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
13 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
14 dismissing the accusation, information, or indictment.

8 COST RECOVERY

9 7. Code section 125.3 provides, in pertinent part, that a Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case.

13 FIRST CAUSE FOR DISCIPLINE

14 (Criminal Conviction)

15 8. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
16 Code section 4301, subdivision (I), in that on or about December 21, 2015, in the criminal
17 proceeding entitled *People vs. Samantha Nicole Schmidt* (Sacramento County Super. Ct., Case
18 No. 15M14441), Respondent was convicted by the Court on her plea of nolo contendere of
19 violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while having a blood
20 alcohol of 0.08 percent and more), a misdemeanor, a crime substantially related to the
21 qualifications, functions, and duties of a pharmacy technician. Respondent admitted that she had
22 a blood alcohol of 0.15 percent or more within the meaning of Vehicle Code section 23578, and
23 that the current offense occurred within ten years of a separate violation of Vehicle Code section
24 23152, subdivision (b), which resulted in a conviction, as more particularly set forth in paragraph
25 11 below. The circumstances of the crime are as follows: On or about August 28, 2015, a
26 Sacramento Police Department Officer was driving northbound on 13th Street from S Street when
27 he observed a Volkswagen Jetta partially in the southbound lane of traffic, with its front
28 passenger side bumper resting against the rear bumper of a Chevrolet Silverado pickup truck.

1 The Volkswagen was running and the headlights were on, and it appeared that the Volkswagen
2 had collided with the Chevrolet. The officer pulled his patrol car in behind the Volkswagen and
3 approached the driver's side of the vehicle. The officer observed a female subject, later identified
4 as Respondent, slumped over in the driver's seat. When the officer opened the driver door, it
5 appeared that Respondent was unconscious in that her chin was resting against her chest, there
6 was saliva hanging from her mouth, her skin was flush, and she did not respond to verbal or
7 tactile stimulus. Respondent also had a strong odor of an alcoholic beverage coming from her
8 person. The officer requested that the Sacramento Fire Department ("SFD") respond to assess
9 Respondent's medical condition. Respondent eventually responded to verbal stimulus, but only
10 with a non-verbal signal ("thumb's up"). The SFD arrived on scene and transported Respondent
11 to UC Davis Medical Center. Respondent was unable to walk or stand, and the SFD had to carry
12 her to the ambulance gurney. Once Respondent arrived at the medical center, she had no
13 recollection of the events that had transpired. Respondent submitted a blood sample for chemical
14 testing and was determined to have a blood alcohol of 0.24 percent.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcoholic Beverages to an Extent or in a Manner
17 Dangerous or Injurious to Oneself, Others and the Public)**

18 9. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
19 Code section 4301, subdivision (h), in that on or about August 28, 2015, Respondent used
20 alcoholic beverages to an extent or in a manner dangerous or injurious to herself, others, and the
21 public, as set forth in paragraph 8 above.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Conviction of More than one Misdemeanor
24 Involving the Consumption of Alcoholic beverages)**

25 10. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
26 Code section 4301, subdivision (k), in that Respondent has been convicted of more than one
27 misdemeanor involving the consumption of alcoholic beverages, as set forth in paragraph 8 above
28 and 11 below.

1 MATTERS IN AGGRAVATION

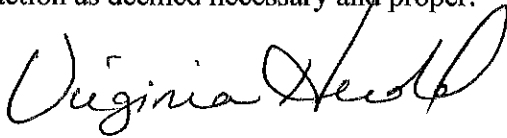
2 11. To determine the degree of discipline to be assessed against Respondent, if any,
3 Complainant alleges as follows: On or about April 18, 2011, the Board received an application
4 for pharmacy technician registration from Respondent. Respondent admitted on her application
5 that she had been convicted of a crime. On or about October 20, 2009, in Sacramento County
6 Superior Court, Case No. 09T05579, Respondent was convicted by the Court on her plea of nolo
7 contendere of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle while
8 having a blood alcohol of 0.08 percent and more), a misdemeanor, with an enhancement pursuant
9 to Vehicle Code section 23578. The Court noted on the Minute Order/Plea form that
10 Respondent's blood alcohol was .19 percent at the time of the incident. On or about October 20,
11 2011, the Board issued Respondent a pharmacy technician registration, as set forth in paragraph 2
12 above.

13 PRAYER

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114184,
17 issued to Samantha Nicole Schmidt;
18 2. Ordering Samantha Nicole Schmidt to pay the Board of Pharmacy the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3; and
21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: 8/11/16



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

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