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

12 Case No. 6038

13 In the Matter of the Accusation Against:

14 **JACK NOBLE PALM**
2040 Gold Dust Dr.
15 Lake Havasu City, AZ, 86404

A C C U S A T I O N

16 Pharmacy Technician Registration No. TCH6689
17 Respondent.

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20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about April 13, 1993, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 6689 to Jack Noble Palm (Respondent). The Pharmacy Technician
26 Registration expired on December 31, 2016, and has not been renewed.
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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 unless otherwise indicated.

5 4. Section 4300.1 of the Code states:

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

11 STATUTORY AND REGULATORY PROVISIONS

12 5. Section 4300 of the Code states in pertinent part:

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

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

17 "(1) Suspending judgment.

18 "(2) Placing him or her upon probation.

19 "(3) Suspending his or her right to practice for a period not exceeding one year.

20 "(4) Revoking his or her license.

21 "(5) Taking any other action in relation to disciplining him or her as the board in its
22 discretion may deem proper.

23 6. Section 4301 of the Code states in pertinent part:

24 "The board shall take action against any holder of a license who is guilty of unprofessional
25 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
26 not limited to, any of the following:

27 ...

28 ...

1 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
2 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
3 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
4 to the extent that the use impairs the ability of the person to conduct with safety to the public the
5 practice authorized by the license”

6 ...

7 “(i) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.

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

28 8. Section 493 of the Code states:

1 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
2 the department pursuant to law to deny an application for a license or to suspend or revoke a
3 license or otherwise take disciplinary action against a person who holds a license, upon the
4 ground that the applicant or the licensee has been convicted of a crime substantially related to the
5 qualifications, functions, and duties of the licensee in question, the record of conviction of the
6 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
7 and the board may inquire into the circumstances surrounding the commission of the crime in
8 order to fix the degree of discipline or to determine if the conviction is substantially related to the
9 qualifications, functions, and duties of the licensee in question.

10 9. California Code of Regulations, title 16, section 1770, states:

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

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Conviction of a Crime)

19 10. Respondent is subject to disciplinary action under section 490 and 4301(l) in that
20 respondent was convicted of a crime substantially related to the qualifications, functions, or duties
21 of a pharmacist technician as follows: on or about October 27, 2016, Respondent was convicted
22 in the case of *The People of the State of California vs. Jack Noble Palm*, County of San
23 Bernardino Superior Court case no. TVI1500186, by his plea of nolo contendere to a violation of
24 Vehicle Code Section 23152(b), Driving Under The Influence of Alcohol Greater than .08%, a
25 Misdemeanor. The circumstances of the crime are as follows:

26 11. On or about December 27, 2015, a California Highway Patrol Officer was dispatched
27 in response to multiple calls of a possible drunk driver swerving in traffic. The officer observed
28 respondent nearly collide with a tractor-trailer. The officer stopped respondent and performed a

1 series of field sobriety tests, which respondent failed. Respondent then took a chemical breath test
2 which showed that his Blood Alcohol level was .22%.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Dangerous or Injurious Use of Alcohol)

5 12. Respondent is subject to disciplinary action under section 4301(h) in that respondent
6 used an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to himself
7 or to any other person or to the public, or to the extent that the use impaired the ability of the
8 respondent to conduct with safety to the public the practice authorized by the license. The
9 circumstances are as follows:

10 13. On or about December 27, 2015, a California Highway Patrol Officer was dispatched
11 in response to multiple calls of a possible drunk driver swerving in traffic. The officer observed
12 respondent nearly collide with a tractor-trailer. The officer stopped respondent and performed a
13 series of field sobriety tests, which respondent failed. Respondent then took a chemical breath test
14 which showed that his Blood Alcohol level was .22%.

15 **DISCIPLINE CONSIDERATIONS**

16 14. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complainant alleges that on or about May 12, 2015, in a prior action, the Board of Pharmacy
18 issued Citation Number CI 2014 63831, which alleged violations of Code section 4301(l),
19 Unprofessional Conduct – Conviction of a Crime substantially related to the practice of
20 pharmacy, and Code section 4301(h), Unprofessional Conduct – Administering to oneself, of any
21 controlled substance, or the use of any dangerous drug or alcoholic beverage.

22 15. On or about December 6, 2014 respondent was arrested for driving under the
23 influence of alcohol, at which time his blood alcohol level was determined to be 0.25%.
24 Thereafter, on March 11, 2015, respondent was convicted of a violation of Vehicle Code Section
25 23152(b), Driving Under The Influence of Alcohol Greater than .08%, a Misdemeanor.

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