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

11 In the Matter of the Accusation Against:  
12 **DANA BRUCE NELSON**  
114 Montecito Ave.  
13 Shell Beach, CA 93449  
14 **Pharmacist License No. RPH 27177**  
15 Respondent.

Case No. 6045  
**ACCUSATION**

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (“Complainant”) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about June 9, 1971, the Board of Pharmacy (“Board”) issued Pharmacist  
22 License No. RPH 27177 to Dana Bruce Nelson (“Respondent”). The Pharmacist License was in  
23 full force and effect at all times relevant to the charges brought herein and will expire on March  
24 31, 2018, unless renewed.

25 **JURISDICTION**

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

1           4.     Section 4011 of the Code provides that “[t]he board shall administer and enforce this  
2 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et seq.)] and the Uniform  
3 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and  
4 Safety Code).”

5           5.     Section 4300, subdivision (a), of the Code states, in pertinent part, that “[e]very  
6 license issued may be suspended or revoked.”

7           6.     Section 4300.1 of the Code states:

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

#### 12                                     STATUTORY AND REGULATORY PROVISIONS

13           7.     Section 4301 of the Code states, in pertinent part:

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

17                     ....

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

24                     ....

25                     (d) The conviction of a crime substantially related to the qualifications,  
26 functions, and duties of a licensee under this chapter. The record of conviction of a  
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
28 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

1 subsequent order under Section 1203.4 of the Penal Code allowing the person to  
2 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.

3 . . . .

4 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
abetting the violation of or conspiring to violate any provision or term of this  
5 chapter or of the applicable federal and state laws and regulations governing  
pharmacy, including regulations established by the board or by any other state or  
6 federal regulatory agency.

7 (p) Actions or conduct that would have warranted denial of a license. . . .

8 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

9 For the purpose of denial, suspension, or revocation of a personal or facility  
10 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  
11 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  
12 perform the functions authorized by his license or registration in a manner  
consistent with the public health, safety, or welfare.

13 **COST RECOVERY**

14 9. 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, with failure of the licentiate to comply subjecting the license to not being  
18 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
19 included in a stipulated settlement.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Substantially Related Crime)**

22 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),  
23 in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was  
24 convicted of a crime substantially related to qualifications, functions, or duties of a registered  
25 pharmacist which to a substantial degree evidence his present or potential unfitness to perform the  
26 functions authorized by his registration in a manner consistent with the public health, safety, or  
27 welfare, as follow:

28 a. On or about October 11, 2016, Respondent was convicted of one misdemeanor count

1 of violating Vehicle Code section 23152, subdivision (b) [driving while having a blood alcohol  
2 content (“BAC”) of 0.08% or higher, by weight], with enhancement pursuant to Vehicle Code  
3 section 23578 [driving while having a BAC of 0.15% or higher], in the criminal proceeding  
4 entitled *The People of the State of California v. Dana Bruce Nelson* (Super. Ct. San Luis Obispo  
5 County, 2016, No. 16-M05656). The court sentenced Respondent to five (5) days in jail, placed  
6 his on three (3) years probation, ordered his to complete a three-month driving under the  
7 influence program, and pay fines.

8 b. The circumstances surrounding the conviction are that on or about May 6, 2016, a  
9 Pismo Beach Police Department officer was dispatched to investigate a report of a suspected  
10 driver under the influence. The witness indicated a vehicle was swerving and nearly colliding  
11 with oncoming traffic. Respondent stopped his vehicle momentarily, but continued to drive and  
12 swerve across the roadway. The officer located Respondent’s vehicle parked at an apartment  
13 complex and contacted Respondent at his residence. Respondent displayed signs of intoxication,  
14 including bloodshot eyes, slow speech, and had an odor of an alcoholic beverage emitting from  
15 his breath. Respondent admitted to consuming a half a bottle of wine at dinner prior to driving  
16 his vehicle. Respondent was driving home after getting into an argument with his girlfriend.  
17 Respondent was unable to satisfactorily perform a series of field sobriety tests as explained and  
18 demonstrated by the officer. Respondent’s breath tests revealed BACs of 0.21% and 0.21%.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Alcohol)**

21 11. Respondent is subject to disciplinary action under section Code section 4301,  
22 subdivision h, on the grounds of unprofessional conduct, in that on or about May 6, 2016,  
23 Respondent administered to oneself of alcoholic beverages to the extent or in a manner as to be  
24 dangerous or injurious to oneself, or to others or to the public which driving under the influence  
25 of alcohol. Complainant refers to and by this reference incorporates the allegations set forth  
26 above in paragraph 10, subparagraph b, inclusive, as though set forth fully.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violating Pharmacy Law / Acts Warranting Denial of Licensure)**

3 12. Respondent is subject to disciplinary action under Code section 4301, subdivisions  
4 (o) and (p), on the grounds of unprofessional conduct, in that Respondent committed acts  
5 violating the Pharmacy Law and/or federal and state laws that would have warranted denial of a  
6 license. Complainant refers to and by this reference incorporates the allegations set forth above  
7 in paragraphs 10 and 11, inclusive, as though set forth fully.

8 **DISCIPLINE CONSIDERATIONS**

9 13. To determine the degree of discipline, Complainant further alleges that on or about  
10 January 5, 2014, the Board issued Citation No. CI 2013 59005 with a \$750.00 fine. The Citation  
11 is final. The Citation alleged the following violations:

12 a. Respondent violated the California Code of Regulations, title 16, sections 1716  
13 [pharmacist shall not deviate from the requirements of a prescription except upon the prior  
14 consent of the prescriber...] and 1761, subdivision (a) [no pharmacist shall compound or dispense  
15 any prescription, which contains any significant error or omission...]. The facts surrounding the  
16 violation were that on or about February 13, 2013, Respondent filled a prescription without  
17 clarifying the a prescription, causing the wrong compound to be made and dispensed to a patient.

18 b. Respondent violated the California Code of Regulations, title 16, section 1735.2,  
19 subdivision (h) [every compounded drug product shall be given an expiration date representing  
20 the beyond use date of the compound, which shall not exceed 180 days from preparation...]. The  
21 facts surrounding the violation are that on or about February 13, 2013, Respondent compounded a  
22 prescription for a patient and provided a beyond use date, which was 169 days from preparation.  
23 The stability for the product as stated on the master formula was only 30 days. No supporting  
24 documentation for extending the beyond use date was provided.

25 c. Respondent violated Code section 4333, subdivision (a) [maintaining prescription on  
26 the premises for at least three years]. The facts surrounding the violation are that on or around  
27 April 17, 2013 through approximately July 15, 2013, Respondent stored some pharmaceutical  
28 records at an unlicensed facility.

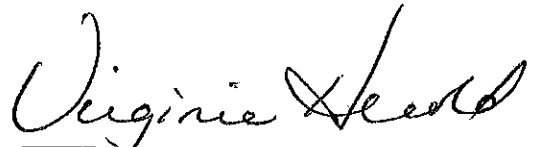
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PRAYER

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 Pharmacist License No. RPH 27177, issued to Dana Bruce Nelson;
2. Ordering Dana Bruce Nelson to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 5/19/17



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

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05/02/2017