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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:	Case No. 6072
12 MICHAEL D. TOWNER	A C C U S A T I O N
13 9506 Date Street	
14 Fontana, CA 92335	
15 Pharmacy Technician Registration	
16 No. TCH 29232	
Respondent.	

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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, Department of Consumer Affairs (Board).
- 22 2. On or about April 30, 1999, the Board issued Pharmacy Technician Registration No.
23 TCH 29232 to Michael D. Towner (Respondent). The Pharmacy Technician Registration was in
24 full force and effect at all times relevant to the charges brought herein and will expire on July 31,
25 2018, unless renewed.

26 **JURISDICTION**

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 unless otherwise indicated.

1 4. Section 4300 provides in pertinent part, that every license issued by the Board is
2 subject to discipline, including suspension or revocation.

3 5. Section 4300.1 states, in pertinent part:

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

9 **STATUTORY PROVISIONS**

10 6. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
11 on the ground that the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, or duties of the business or profession for which the license was issued.

13 7. Section 4301 states, in pertinent part:

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

17

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

23

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

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

13 REGULATORY PROVISIONS

14 8. California Code of Regulations, title 16, section 1770, states:

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

21 COST RECOVERY

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

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 10. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
4 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
5 unprofessional conduct, in that the Respondent was convicted of a crime substantially related to
6 the qualifications, functions, and duties of a pharmacy technician, as follows: On or about
7 November 8, 2016, after pleading nolo contendere, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
9 having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The*
10 *People of the State of California v. Michael Dea Towner* (Super. Ct. San Bernardino County,
11 2016, No. 16CR-036738). The Court sentenced Respondent to serve 10 days in jail and placed
12 him on 3 years probation, with terms and conditions. The circumstances surrounding the
13 conviction are that on or about March 18, 2016, a Fontana Police Department officer initiated a
14 traffic enforcement stop after observing Respondent's vehicle swerving in and out of its lane and
15 damage to its front passenger side tire. Upon contact, the officer observed Respondent to display
16 objective symptoms of being under the influence of alcohol that included bloodshot watery eyes,
17 slurred speech, and the odor of alcohol coming from his breath and person. Respondent submit to
18 a series of field sobriety tests which he was unable to perform as indicated. During the booking
19 procedure, Respondent provided a blood sample that revealed a blood alcohol content level of
20 0.24%.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Dangerous Use of Alcohol)**

23 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
24 the grounds of unprofessional conduct, in that, on or about March 18, 2016, Respondent used
25 alcoholic beverages to an extent or in a manner dangerous or injurious to himself, any person, or
26 the public. Complainant refers to, and by this reference incorporates, the allegations set forth
27 above in paragraph 10, as though fully set forth herein.

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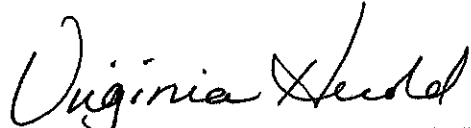
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PRAYER

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 Pharmacy Technician Registration Number TCH 29232, issued to Michael D. Towner;
2. Ordering Michael D. Towner 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/13/17



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

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