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

11
12 In the Matter of the Accusation Against:
13 **L'DANIELLE GAYLE FLUHARTY**
40850 Camellia Drive
14 **Hemet, CA 92544**
15 **Pharmacy Technician Registration No.**
TCH 140359

Case No. 6096

A C C U S A T I O N

16 Respondent.

17
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 (Board), Department of Consumer Affairs.
23 2. On or about September 3, 2014, the Board issued Pharmacy Technician Registration
24 Number TCH 140359 to L'Danielle Gayle Fluharty (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on March 31, 2018, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 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 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate the
15 rehabilitation of a person when:

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

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

24 8. Section 493 of the Code states:

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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

9 ...

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

15 ...

16 (i) The conviction of a crime substantially related to the qualifications, functions,
17 and duties of a licensee under this chapter. The record of conviction of a violation of
18 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
19 regulating controlled substances or of a violation of the statutes of this state regulating
20 controlled substances or dangerous drugs shall be conclusive evidence of unprofessional
21 conduct. In all other cases, the record of conviction shall be conclusive evidence only of
22 the fact that the conviction occurred. The board may inquire into the circumstances
23 surrounding the commission of the crime, in order to fix the degree of discipline or, in
24 the case of a conviction not involving controlled substances or dangerous drugs, to
25 determine if the conviction is of an offense substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
27 conviction following a plea of nolo contendere is deemed to be a conviction within the
28 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
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. . .

22 REGULATORY PROVISIONS

23 10. California Code of Regulations, title 16, section 1769, subdivision (c) states:

24 When considering the suspension or revocation of a facility or a personal license
25 on the ground that the licensee or the registrant has been convicted of a crime, the board,
26 in evaluating the rehabilitation of such person and his present eligibility for a license will
27 consider the following criteria:

28 (1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

2 (4) Whether the licensee has complied with all terms of parole, probation,
3 restitution or any other sanctions lawfully imposed against the licensee.

4 (5) Evidence, if any, of rehabilitation submitted by the licensee.

5 11. California Code of Regulations, title 16, section 1770, states:

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

13 COSTS

14 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licensee 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.

18 FIRST CAUSE FOR DISCIPLINE

19 (February 18, 2015 Criminal Conviction for DUI on December 5, 2014)

20 13. Respondent has subjected her registration to disciplinary action under sections 490
21 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially
22 related to the qualifications, duties, and functions of a pharmacy technician. The circumstances
23 are as follows:

24 a. On or about February 4, 2015, Respondent failed to appear at her initial
25 criminal arraignment, and the Court issued a bench warrant for her arrest. On or about February
26 18, 2015, in a criminal proceeding entitled *People of the State of California v. LDanielle Gayle*
27 *Fluharty*, in Orange County Superior Court, case number 15CM00610, the bench warrant was
28 recalled, and Respondent was convicted on her plea of guilty of violating Vehicle Code section
23152, subdivision (a), driving under the influence of alcohol (DUI), a misdemeanor. Respondent
further admitted that in the commission of violating Vehicle Code section 23152, she had blood
alcohol concentration (BAC) of .20 percent or more, pursuant to Vehicle Code section 23538,

1 subdivision (b)(2). An additional count of violating Vehicle Code section 23152, subdivision (b),
2 driving with a blood alcohol concentration of .08 percent or more, was dismissed pursuant to the
3 plea agreement.

4 b. The facts that led to the conviction are that on December 5, 2014, at
5 approximately 1:53 in the morning, an officer with the Orange Police Department (OPD) was on
6 patrol in the City of Orange, when he observed Respondent's vehicle drive past him at what
7 appeared to be a fast rate of speed. The OPD officer paced Respondent's vehicle and estimated
8 that Respondent was driving at the appropriate speed limit, however, her vehicle's license plate
9 lamp was inoperable, and the officer conducted an enforcement stop. Upon making contact with
10 Respondent, the officer detected the odor of an alcoholic beverage emitting from within the
11 vehicle. Respondent's eyes appeared red, watery, and droopy, and she had slurred speech. During
12 questioning, Respondent admitted to consuming two beers earlier that evening. After further
13 questioning and observing objective symptoms of alcohol intoxication, the OPD officer
14 conducted a series of field sobriety tests. Respondent was unable to complete the tests as
15 explained and demonstrated by the officer. Respondent was arrested for driving under the
16 influence. During processing, Respondent was administered a breath test which registered results
17 of .22, and .23 percent BAC, respectively.

18 c. As a result of the conviction, Respondent was granted informal probation for
19 three years. Respondent was ordered to complete a nine-month Level 2 First Offender Alcohol
20 program, to pay fines and fees, and to comply with the DUI probation terms.

21 d. On or about June 19, 2015, Respondent's probation was revoked, then
22 reinstated and modified, due to a violation based on a subsequent conviction in case number
23 15HM05441, as described in paragraph 15, below, and incorporated herein by reference. On or
24 about October 20, 2015, Respondent's probation was revoked and bench warrant was issued for
25 failure to pay required fees, and non-compliance with the nine-month alcohol program. On March
26 8, 2016, a probation violation arraignment was held in which Respondent paid the full balance of
27 fees owed, and was granted an extension to comply with the probation terms, and her probation
28 was reinstated.

1 Cal Trans/ Physical Labor in lieu of serving jail time. Respondent was further ordered to complete
2 38 hours of community service in lieu of payment of fines and fees.

3 d. On or about June 24, 2016, Respondent's probation was revoked based on her
4 failure to comply with the terms of probation. On or about June 28, 2016, a probation violation
5 arraignment was held in which Respondent was granted an extension to comply with the
6 probation terms, and her probation was reinstated.

7 **PRAYER**

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


10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 140359,
11 issued to L'Danielle Gayle Fluharty;

12 2. Ordering L'Danielle Gayle Fluharty to pay the Board of Pharmacy the reasonable
13 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
14 section 125.3; and,

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

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19 DATED: _____

7/16/17



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

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