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7	Attorneys for Complainant
8	BEFORE THE
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
10	STATE OF CALIFORNIA
11	In the Matter of the Statement of Issues Case No. 5310
12	Against:
13	KYLE JAMES GALLAGHER STATEMENT OF ISSUES
14	Applicant for Pharmacy Technician License
15	Respondent.
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17	Complainant alleges:
18	PARTIES
19	1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21	2. On or about December 3, 2013, the Board of Pharmacy received an application for
22	registration as a pharmacy technician from Kyle James Gallagher (Respondent). On or about
23	December 2, 2013, Respondent certified under penalty of perjury to the truthfulness of all
24	statements, answers, and representations in the application. The Board denied the application on
25	August 6, 2014.
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	STATEMENT OF ISSUES (CASE NO. 5310)

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1	JURISDICTION	
2	3. This Statement of Issues is brought before the Board of Pharmacy (Board),	
3	Department of Consumer Affairs, under the authority of the following laws. All section	
4	references are to the Business and Professions Code (Code) unless otherwise indicated.	
5	STATUTORY AND REGULATORY PROVISIONS	ĺ
6	4. Section 4300, subdivision (c) of the Code states, in pertinent part:	
7	"The board may refuse a license to any applicant guilty of unprofessional conduct. The	
8	board may, in its sole discretion, issue a probationary license to any applicant for a license who is	
9	guilty of unprofessional conduct and who has met all other requirements for licensure"	
10	5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is	
11	defined to include, but not be limited to, any of the following:	
12	"(h) The administering to oneself, of any controlled substance, or the use of any dangerous	
13	drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to	
14	oneself, to a person holding a license under this chapter, or to any other person or to the public, or	
15	to the extent that the use impairs the ability of the person to conduct with safety to the public the	
16	practice authorized by the license.	
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18	"(1) The conviction of a crime substantially related to the qualifications, functions, and	
19.	duties of a licensee under this chapter."	
20	6. Section 480 of the Code states, in pertinent part:	
21	"(a) A board may deny a license regulated by this code on the grounds that the applicant has	
22	one of the following:	
23	"(1) Been convicted of a crime. A conviction within the meaning of this section means a	
24	plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a	
25	board is permitted to take following the establishment of a conviction may be taken when the time	
26	for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an	-
27	order granting probation is made suspending the imposition of sentence, irrespective of a	
28	subsequent order under the provisions of Section 1203.4 of the Penal Code.	
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"(3) (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

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

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

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FACTUAL BACKGROUND

8. On or about February 5, 2012, a police officer with the Vacaville Police Department
was dispatched to Respondent's residence based on the report of a battery in progress. When the
officer arrived at the scene and met with Respondent he detected the strong odor of an alcoholic
beverage about Respondent's person. Respondent told the officer that he had pushed his mother
and that he had had a considerable amount to drink. Respondent's mother later placed
Respondent under citizen's arrest.

9. On or about September 3, 2014, in a criminal proceeding entitled *People v. Kyle James Gallagher*, Case Number FCR299658, in Solano County Superior Court, Respondent was
 convicted by his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b)
 (driving while having a 0.08% or higher blood alcohol), a misdemeanor. Imposition of sentence
 was suspended and Respondent was ordered to serve three (3) years probation and pay a fine and
 fees. The circumstances of Respondent's conviction are as follows:

a. On or about January 22, 2013, Respondent, while driving his vehicle, collided with
another vehicle in the area of Ulatis Drive at Leisure Town Road in Vacaville, California, causing
minor damage to that vehicle. After the accident Respondent fled the scene without exchanging

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1	information with the driver of the damaged vehicle. When police officers with the Vacaville
2	Police Department responded to Respondent's residence after the incident, Respondent told one
3	of the officers that he had been drinking all day. Respondent was then arrested for driving under
4	the influence of alcohol. A blood sample taken from Respondent on January 22, 2013 indicated
5	that his blood alcohol count was 0.37%.
6	FIRST CAUSE FOR DENIAL OF APPLICATION
7	(Conviction of Substantially Related Crime)
8	10. Respondent's application is subject to denial under the following section(s) of the
9	Code: 480, subdivision (a)(1); 480, subdivision (a)(3)(B) by reference to 4301, subdivision (l),
10	4300, subdivision (c), and California Code of Regulations, title 16, section 1770, for conviction of
11	a substantially related crime, in that on or about September 3, 2014, as described above in
12	paragraph 9, Respondent suffered a substantially related conviction.
13	SECOND CAUSE FOR DENIAL OF APPLICATION
14	(Use of Alcohol in a Dangerous Manner)
15	11. Respondent's application is subject to denial under sections 4300, subdivision (c) and
16	4301, subdivision (h) of the Code in that on or about February 5, 2012 and January 22, 2013, as
17	described above in paragraphs 8 and 9.a., Respondent used alcohol in a dangerous manner.
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	STATEMENT OF ISSUES (CASE NO. 5310)

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1	PRAYER
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3	and that following the hearing, the Board of Pharmacy issue a decision:
4	1. Denying the application of Kyle James Gallagher to be a pharmacy technician;
5	2. Taking such other and further action as deemed necessary and proper.
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7	NUTER 1/19/15 / 19/19/19/19/19/19/19/19/19/19/19/19/19/1
8	DATED:
9	Executive Officer Board of Pharmacy
10	Department of Consumer Affairs State of California
11	Complainant
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