BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 5650

DANIEL JAMES LEARN 24470 Corte Descanso Murrieta, CA 92562

Pharmacy Technician Registration No. TCH 42139

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of

Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on June 6, 2016.

It is so ORDERED on May 5, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Bу

Amy Gutierrez, Pharm.D. Board President

		· · · · · · · · · · · · · · · · · · ·
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8	Attorneys for Complainant	
9	BEFORE THE BOARD OF PHARMACY	
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11		·
12	In the Matter of the Accusation Against:	Case No. 5650
13	DANIEL JAMES LEARN	
14	24470 Corte Descanso Murrieta, CA 92562	STIPULATED SURRENDER OF LICENSE AND ORDER
15	Pharmacy Technician Registration No. TCH 42139	
16	Respondent.	
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-18	IT IS HEREBY STIPULATED AND AGE	REED by and between the parties to the above-
19	entitled proceedings that the following matters are true:	
20	PARTIES	
21	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy	
22	(Board). She brought this action solely in her official capacity and is represented in this matter by	
23	Kamala D. Harris, Attorney General of the State of California, by Nicole R. Trama, Deputy	
24	Attorney General.	
25	2. Daniel James Learn (Respondent) is representing himself in this proceeding, and has	
26	chosen not to exercise his right to be represented by counsel.	
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3. On or about April 5, 2002, the Board issued Pharmacy Technician Registration No. TCH 42139 to Respondent Daniel James Learn. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5650, and will expire on July 31, 2017, unless renewed.

JURISDICTION

4. Accusation No. 5650 was filed before the Board, and is currently pending against
Respondent. The Accusation and all other statutorily required documents were properly served
on Respondent on December 31, 2015. Respondent timely filed his Notice of Defense contesting
the Accusation. A copy of Accusation No. 5650 is attached as Exhibit A, and incorporated by
reference.

ADVISEMENT AND WAIVERS

Respondent has carefully read, and understands the charges and allegations in
 Accusation No. 5650. Respondent also has carefully read, and understands the effects of this
 Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

22 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation
No. 5650, agrees that cause exists for discipline, and hereby surrenders his Pharmacy Technician
Registration No. TCH 42139 for the Board's formal acceptance.

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Respondent understands that by signing this stipulation he enables the Board to issue 9. an order accepting the surrender of his Pharmacy Technician Registration without further process.

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CONTINGENCY

This stipulation shall be subject to approval by the Board. Respondent understands 10. 4 and agrees that counsel for Complainant and the staff of the Board of Pharmacy may 5 communicate directly with the Board regarding this stipulation and surrender, without notice to or 6 participation by Respondent. By signing the stipulation, Respondent understands and agrees that 7 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board 8 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, 9 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this 10 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not 11 be disqualified from further action by having considered this matter. 12

11. The parties understand and agree that Portable Document Format (PDF) and facsimile 13 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures 14 thereto, shall have the same force and effect as the originals. 15

This Stipulated Surrender of License and Order is intended by the parties to be an 12. 16 17 integrated writing representing the complete, final, and exclusive embodiment of their agreement, It supersedes any and all prior or contemporaneous agreements, understandings, discussions, 18 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order 19 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing 20executed by an authorized representative of each of the parties, 21

In consideration of the foregoing admissions and stipulations, the parties agree that 13. 22 the Board may, without further notice or formal proceeding, issue and enter the following Order: 23

<u>ORDER</u>

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 42139 issued to Respondent Daniel James Learn is surrendered and accepted by the Board. 26

The surrender of Respondent's Pharmacy Technician Registration and the acceptance 1. 27 of the surrendered license by the Board shall constitute the imposition of discipline against 28

Respondent. This stipulation constitutes a record of the discipline, and shall become a part of Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a pharmacy technician in Californiaas of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was
issued, his wall certificate on or before the effective date of the Decision and Order.

If he ever applies for licensure or petitions for reinstatement in the State of California,
the Board shall treat it as a new application for licensure. Respondent must comply with all the
laws, regulations and procedures for licensure in effect at the time the application or petition is
filed, and all of the charges and allegations contained in Accusation No. 5650 shall be deemed to
be true, correct and admitted by Respondent when the Board determines whether to grant or deny
the application or petition.

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5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$1,213.30 prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or
petition for reinstatement of a license, by any other health care licensing agency in the State of
California, all of the charges and allegations contained in Accusation, No. 5650 shall be deemed
to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
other proceeding seeking to deny or restrict licensure.

Respondent may not apply for any license, permit, or registration from the Board for 7. 20three (3) years from the effective date of this Decision, Respondent stipulates that should he-or-21 she apply for any license from the Board on or after the effective date of this Decision, all 22 allegations set forth in the Accusation shall be deemed to be true, correct and admitted by 23 Respondent when the Board determines whether to grant or deny the application. Respondent 24 shall satisfy all requirements applicable to that license as of the date the application is submitted 25 to the Board, including, but not limited to certification by a nationally recognized body prior to 26 the issuance of a new license. Respondent is required to report this surrender as disciplinary 27action. 28

1	ACCEPTANCE	
· 2	I have carefully read the Stipulated Surrender of License and Order. I understand the	
3	stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this	
4	Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to	
5	be bound by the Decision and Order of the Board of Pharmacy.	
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7	DATED: 02/12/2016 1 Juin Comps Lean	
8 -	DANIEL JAMES LEARN Respondent	
9	ENDORSEMENT	
10	ENDORSEMENT The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted	
11	for consideration by the Board of Pharmacy of the Department of Consumer Affairs,	
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. 13	Dated: $2/12/2016$ Respectfully submitted,	
]4	KAMALA D. HARRIS Attorney General of California	
15	ANTOINETTE CINCOTTA Supervising Deputy Attorney General	
16	Mich R TRana	
17	NICOLE R, TRAMA	
18	Deputy Attorney General Attorneys for Complainant	
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Stipulated Surrender of License (Case No. 5650)

Exhibit A

Accusation No. 5650

(
1	Kamala D. Harris	
2	Attorney General of California	
3	Senior Assistant Attorney General	
4	Supervising Deputy Attorney General State Bar No. 132645	
5	600 West Broadway, Suite 1800 San Diego, CA 92101	
	P.O. Box 85266 San Diego, CA 92186-5266	
6	Felephone: (619) 645-2105	
7	Facsimile: (619) 645-2061 Attorneys for Complainant	
8	NERONE SEPT	
9	BEFORE THE BOARD OF PHARMACY	
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11		
12	In the Matter of the Accusation Against: Case No. 5650	
13	DANIEL JAMES LEARN A C C U S A T I O N 24470 Corte Descanso	
14	Murrieta, CA 92562	
15	Pharmacy Technician Registration No. TCH 42139	
16	Respondent.	
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19	Complainant alleges:	
20	PARTIES	
21	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as	
22	the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.	
23	2. On or about April 5, 2002, the Board issued Pharmacy Technician Registration	
24	Number TCH 42139 to Daniel James Learn (Respondent). The Pharmacy Technician Registration	
25	was in full force and effect at all times relevant to the charges brought herein and will expire on	
26	July 31, 2017, unless renewed.	
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28	111	
: 	(DANIEL JAMES LEARN) ACCUSATION	

I	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(a) of the Code provides that every license issued may be suspended or	
6	revoked.	
7	5. Section 4300.1 of the Code states:	
8	The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.	
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12	STATUTORY PROVISIONS	
13	6. Section 482 of the Code states:	
14 15	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:	
15	(a) Considering the denial of a license by the board under Section 480; or	
10	(b) Considering suspension or revocation of a license under Section 490.	
18	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.	
19	7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or	
20	revoke a license when it finds that the licensee has been convicted of a crime substantially related	
21	to the qualifications, functions or duties of a licensed vocational nurse.	
22	8. Section 493 of the Code states:	
23	Notwithstanding any other provision of law, in a proceeding conducted by a board	
24	within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a 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 discipline or to determine if the conviction is substantially related to the qualifications,	
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28	functions, and duties of the licensee in question.	
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ł	(DANIEL JAMES LEARN) ACCUSATION (

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

9. Section 4301 of the Code states:

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

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

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

REGULATORY PROVISIONS

California Code of Regulations, title 16, section 1769, states:

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

(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 California Code of Regulations, title 16, section 1770, states: 11. 6 7 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, 8 functions or duties of a licensee or registrant if to a substantial degree it evidences present Q, 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. ۱ 10 1 COST RECOVERY 11 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the 12 administrative law judge to direct a licentiate found to have committed a violation or violations of 13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 14 enforcement of the case. 15 FIRST CAUSE FOR DISCIPLINE 16 (October 1, 2014 Criminal Convictions for Driving While Under the Influence 17 of Alcohol on August 10, 2014) 18 13. Respondent is subject to disciplinary action under sections 490 and 4301, 19 subdivision (1) of the Code that she was convicted of a crime that is substantially related to the 20qualifications, functions and duties of a Pharmacist. The circumstances are as follows: 21 On or about October 1, 2014, in a criminal proceeding entitled The People of thea. 22 State of California v. Daniel James Learn, in Riverside County Superior Court, case number 23 SWM1406757, Respondent was convicted on his plea of guilty to violating Vehicle Code section 24 23152, subdivision (a) driving under the influence of alcohol and Vehicle Code section 23152, 25 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, 26 misdemeanors. Respondent admitted and the court found true the allegations that his BAC was 27 .15 percent or more within the meaning of Vehicle Code section 23578. 28 4

(DANIEL JAMES LEARN) ACCUSATION |

b. As a result of the conviction, Respondent was granted summary probation for three years. Respondent was ordered to serve and complete 18 days of the work release program, be committed to the Riverside County Sheriff for 20 days, with two days of credit for time served, a nine-month First Conviction Program, and a MADD Victim Impact Panel session. He was further ordered to pay fees, fines, and comply with the terms of probation.

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The facts that led to the convictions are that on the evening of August 10, 2014, a C. 6 Riverside County Sheriff deputy responded to a traffic collision in the city of Murrieta. A witness 7 observed Respondent lose control of his vehicle and collided with a tree in a grassy area. Upon 8 arrival at the scene, the deputy observed a vehicle with major damage to the right side of the pick 9 up truck and the passenger airbag deployed. Upon contact with Respondent, which was seated in 10 the drivers seat of the vehicle and appeared to be out of it, and could not recall what had just 11 happened. The deputy detected a strong odor of an alcoholic beverage emitting from 12 Respondent's person. The deputy observed that Respondent's eyes were red and watery, his 13 speech was shurred. Respondent submitted to a series of field sobriety tests which he was unable 14 15 to complete as explained and demonstrated by the deputy. Respondent was subsequently arrested 16 for driving under the influence and causing a traffic collision. During booking, Respondent 17 provided a blood sample which was analyzed with a BAC of .27 percent.

SECOND CAUSE FOR DISCIPLINE

(Using Alcoholic Beverage to the Extent or Manner as to be Dangerous or Injurious) 14. Respondent has subjected his registration to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that he used alcoholic beverages to the extent or in a manner as to be dangerous or injurious himself or to the public, as described in paragraph 13 above.

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 42139, issued to Daniel James Learn;

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(DANIEL JAMES LEARN) ACCUSATION

Ordering Daniel James Learn to pay the Board of Pharmacy the reasonable costs of 2. the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as deemed necessary and proper. 3. 12/21/15 DATED: VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2015802710 81217941.doc (DANIEL JAMES LEARN) ACCUSATION