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

12 In the Matter of the Accusation Against:

Case No. 3646

13 **BRANDON CARLISLE LOCKE**
2808 Dore Dr.
Bakersfield, CA 93304

A C C U S A T I O N

14 **Pharmacy Technician License No. 77299**

15 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.

22 2. On or about September 6, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. 77299 to Brandon Carlisle Locke (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on October 31, 2010, 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 unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
6 surrender or cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction
7 to proceed with a disciplinary action during the period within which the license may be renewed,
8 restored, reissued or reinstated.

9 5. Section 490 states:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code."

24 6. Section 4301 states:

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

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

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7 “(l) The conviction of a crime substantially related to the qualifications, functions, and
8 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
9 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
10 substances or of a violation of the statutes of this state regulating controlled substances or
11 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
12 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
13 The board may inquire into the circumstances surrounding the commission of the crime, in order
14 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
15 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
16 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
17 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
18 of this provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting probation is made
20 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
21 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
22 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
23 indictment.”

24 **REGULATORY PROVISIONS**

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

26 “For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

5 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Criminal Convictions)**

11 9. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
12 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
13 that Respondent was convicted of crimes substantially related to the qualifications, functions or
14 duties of a licensed pharmacy technician, as follows:

15 a. On or about March 11, 2008, after pleading nolo contendere, Respondent was
16 convicted of violating Vehicle Code section 23152, subdivision (a) [driving under the influence
17 of an alcoholic beverage], and 14601.1, subdivision (a) [driving while license suspended],
18 misdemeanors, in the criminal proceeding entitled *People of the State of California vs. Brendan*
19 *Carlisle Locke* (Super. Ct. Kern County, 2008, No. BM726313A). The Court sentenced
20 Respondent to three years probation and ten days in jail and fined.

21 b. The circumstances surrounding the conviction are that on or about February 16, 2008,
22 the California Highway Patrol stopped Respondent for traveling at a high rate of speed. During
23 the stop, officers' noticed signs of intoxication. Respondent's eyes were red and watery and he
24 had slurred speech. The officer was able to smell an odor of an alcohol beverage emitting from
25 within the vehicle. A driver's check revealed that Respondent's license was suspended.
26 Respondent performed several field sobriety tests unsuccessfully. Consequently, he was arrested
27 for driving a vehicle while under the influence of alcohol and/or drugs. The result of
28 Respondent's chemical breath test was 0.15 BAC.

1 c. On or about August 1, 2008, after pleading nolo contendere, Respondent was
2 convicted of violating Vehicle Code sections 4462.5 [giving officer unlawful registration], and
3 12500, subdivision (a) [driving without a license], misdemeanors, in the criminal proceeding
4 entitled *The People of the State of California vs. Brandon Carlisle Locke* (Super. Ct. Kern
5 County, 2008, No. BM730933A). The Court ordered Respondent to pay fines.

6 d. The circumstances surrounding the conviction are that on or about April 16, 2008,
7 Bakersfield Police stopped Respondent for driving without a license and not providing proper
8 vehicle registration.

9 e. On or about January 12, 2009, after pleading nolo contendere, Respondent was
10 convicted of violating Penal Code sections 460, subdivision (b) [second degree burglary] and 476
11 [make/pass fictitious check], misdemeanors, in the criminal proceeding entitled *People of the*
12 *State of California vs. Brendan Carlisle Locke* (Super. Ct. Kern County, 2009, No. BM744872A).
13 The Court sentenced Respondent to three years probation and 30 days in jail and fined.

14 f. The circumstances surrounding the conviction are that on or about January 8, 2009,
15 Respondent presented a Wells Fargo bank teller with a \$500 personal check and his California
16 identification card. The checks belonged to D.R. The bank teller contacted D.R. who denied
17 writing a check to Respondent. Respondent had in his possession an additional blank check
18 belonging to D.R. Respondent was subsequently arrested for writing checks with intent to
19 defraud and commercial burglary.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Use of Alcohol Beverages to the Extent to be Dangerous to Oneself)**

22 10. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
23 the Code, on the grounds of unprofessional conduct, in that on or about February 16, 2008,
24 Respondent used and consumed alcoholic beverages to the extent or in a manner as to be
25 dangerous and injurious to himself and others, as set forth in paragraph 9, above.

26 **PRAYER**

27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board issue a decision:

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1. Revoking or suspending Pharmacy Technician License No. 77299, issued to Respondent;
2. Ordering Respondent to pay the Board 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: 7/15/10



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

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