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

11 In the Matter of the Accusation Against:

Case No. 3648

12 **BRYAN LEE**
13 **510 E. Almond Ave.**
14 **Madera, CA 93637**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
44694

16 Respondent.

17
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 August 22, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 44694 (Pharmacy Technician Registration) to Bryan Lee
24 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

....

(l) 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

1 controlled substances or dangerous drugs, to determine if the conviction is of an
2 offense substantially related to the qualifications, functions, and duties of a licensee
3 under this chapter. A plea or verdict of guilty or a conviction following a plea of
4 nolo contendere is deemed to be a conviction within the meaning of this provision.
5 The board may take action when the time for appeal has elapsed, or the judgment of
6 conviction has been affirmed on appeal or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order
8 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
9 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
10 or dismissing the accusation, information, or indictment.

11

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

16 7. Section 125.3 of the Code states, in pertinent part, that the Board may request the
17 administrative law judge to direct a licensee found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction)

22 8. Respondent is subject to disciplinary action under Code sections 4301, subd. (l), and
23 490 in that Respondent was convicted of a crime substantially related to the qualifications,
24 functions, or duties of a pharmacy technician. The circumstances are as follows:

25 9. On or about June 27, 2008, in the Superior Court of California, County of Madera, in
26 the case entitled, *People of the State of California v. Bryan Lee* (Super. Ct. Madera County, 2007,
27 Case No. MCR030218), Respondent was convicted on his plea of no contest of violating Penal
28 Code section 415, subd. (1), [fighting], a misdemeanor. The circumstances of the crime are that
on or about March 23, 2007, Respondent and one of his customers, R. A., got into a verbal
argument over the telephone regarding R. A.'s payment for a prescription. Following the
termination of the phone call, Respondent went to R. A.'s place of business and demanded
payment for the prescription. Another argument ensued that resulted in Respondent fighting with

1 R. A. over R. A.'s purse. This crime is substantially related to the functions, qualifications, and
2 duties of a pharmacy technician.

3 SECOND CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

5 10. Respondent is subject to disciplinary action under Code section 4301 in that
6 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption.
7 The circumstances are detailed above in paragraphs 8 and 9.

8 PRAYER

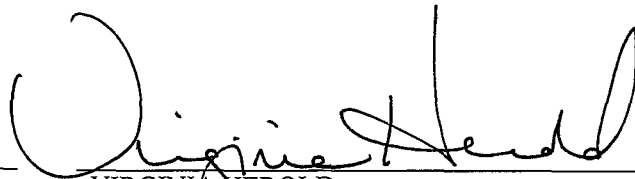
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 44694,
12 issued to Bryan Lee.

13 2. Ordering Bryan Lee to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;

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

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18
19 DATED: 5/6/10



20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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