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

11 In the Matter of the Accusation Against:

Case No. 3693

12 **KENNETH ROGER FOLMAR**
13 **P.O. Box 1741**
14 **Colfax, California 95713**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **5785**

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 March 18, 1993, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 5785 (License) to Kenneth Roger Folmar (Respondent). The License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 February 28, 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, in pertinent part:

(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, in pertinent part:

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.

(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

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

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13 COST RECOVERY

14 6. Section 125.3 of the Code states, in pertinent part, that the Board may request the
15 administrative law judge to direct a licentiate 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 (Conviction)

20 7. Respondent is subject to disciplinary action under Code section 4301, subd. (1) in that
21 Respondent was convicted of a crime substantially related to his License and his practice as a
22 pharmacy technician. The circumstances are as follows:

23 8. On or about November 16, 2009, in the Superior Court of California, County of
24 Nevada, in the case entitled, *People of the State of California v. Kenneth Roger Folmar* (Super.
25 Ct. Nevada County, 2009, Case No. M09-1200), Respondent was convicted on his plea of guilty
26 of violating Vehicle Code section 23152, subd. (a) [driving under the influence of alcohol], a
27 misdemeanor. The circumstances of the crime are that on or about July 22, 2009, Officer F. C.
28 Lilyquist of the California Highway Patrol was dispatched to the scene of a collision involving

1 the Respondent's vehicle rear-ending a stopped motor vehicle. Officer Lilyquist approached
2 Respondent's vehicle to speak with Respondent. Respondent was parked on the side of the road
3 near the site of the collision. Respondent was in the driver's seat of his vehicle. Officer Lilyquist
4 observed the Respondent to be in a stupor, with droopy eyelids and bloodshot eyes. Respondent
5 was slow to answer the officer's questions and his speech was slow and slurred. Respondent
6 admitted to drinking alcohol and driving. As Respondent exited his vehicle, his movements were
7 slow and his gait was staggered. Officer Lilyquist observed Respondent sway while standing.
8 Respondent had an odor of alcohol upon his breath. Officer Lilyquist asked Respondent to
9 perform field sobriety tests and Respondent agreed. Respondent performed the tests poorly.
10 Based upon Respondent's poor performance on the field sobriety tests, the collision, and Officer
11 Lilyquist's observations of Respondent's signs of intoxication, Respondent was placed under
12 arrest for violating Vehicle Code section 23152, subs. (a) [driving under the influence of
13 alcohol] and (b) [driving with a blood alcohol content in excess of 0.08%]. Respondent submitted
14 to a blood alcohol test and his test results were 0.30% blood alcohol content.

15 SECOND CAUSE FOR DISCIPLINE

16 (Dangerous Use of Alcohol)

17 9. Respondent is subject to disciplinary action under Code section 4301, subd. (h) in that
18 Respondent committed an act involving an alcoholic beverage to the extent or in a manner as to
19 be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any
20 other person or to the public by violating Vehicle Code section 23152, subd. (a) (driving with a
21 blood alcohol content in excess of 0.08%). The circumstances are detailed above in paragraph 8.

22 PRAYER

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 5785,
26 issued to Kenneth Roger Folmar.

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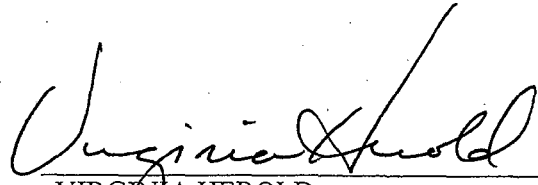
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2. Ordering Kenneth Roger Folmar to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 6/9/10



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

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