

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 3766

12 **KERSTIN LYNN ANDERSON**
13 **53380 Avenida Herrera**
14 **La Quinta, CA 92253**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 2327**

17 Respondent.

18
19 Complainant alleges:

20
21 **PARTIES**

22 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

24 2. On or about December 2, 1992, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 2327 to Kerstin Lynn Anderson (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought
27 herein and will expire on February 29, 2012, unless renewed.
28

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

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

7 9. Section 4301 of the Code states:

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

12

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

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of
22 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction
26 shall be conclusive evidence only of the fact that the conviction occurred. The
27 board may inquire into the circumstances surrounding the commission of the
28 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.

. . . .

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

.....

(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.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

11. 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.

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(July 27, 2009 Conviction for DUI on December 2, 2008)

13. Respondent is subject to disciplinary action under sections 490 and 4301(I) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about July 27, 2009, in a criminal proceeding entitled *The People of the State of California v. Kerstin Lynn Anderson*, in Riverside County Superior Court case number

1 INM194834, Respondent was convicted on her plea of guilty for violating Vehicle Code section
2 23152(a), driving under the influence of alcohol and Vehicle Code section 23152(b), driving with
3 a blood alcohol content of .08 or more, with an enhancement of Vehicle Code section 23578,
4 blood alcohol concentration of 0.15 and more, by weight, misdemeanors.

5 b. As a result of her conviction, Respondent was placed on summary probation for a
6 period of 5 years, ordered to serve 30 days in jail, obey all laws, pay all applicable fees, fines and
7 restitution, attend and complete a drinking driver program and attend and complete a Sheriff's
8 labor program.

9 c. The facts that led to the conviction were that on or about December 2, 2008, the
10 Sheriff's Department responded to a call that Respondent's car was stopped in the southbound
11 lanes of PGA Blvd. and Avenue 54 facing north, in the Palm Springs, California area. When the
12 sheriff deputy approached Respondent in her vehicle, he noticed the odor of an alcoholic
13 beverage emanating from her. He further noticed that she had bloodshot eyes, slurred speech and
14 appeared "extremely confused" as she did not know where she was and she kept closing her eyes
15 and attempting to fall asleep. She could not exit her vehicle without assistance and was unable to
16 stand alone. Respondent admitted to the sheriff deputy that she had drank 2 shots of Brandy at
17 approximately 2:40 p.m. that day and that she had taken two Vicodin pills as well. At 1946
18 hours, Respondent registered a .303% on the P.A.S. device and a .285% at 1952.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)**

21 14. Respondent is subject to disciplinary action under section 4301(h) of the Code for
22 unprofessional conduct in that Respondent used alcohol to an extent in a manner dangerous to
23 herself or others, as is set forth above in paragraph 13, which is incorporated herein by reference
24 as though fully set forth herein.

