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7 8	Facsimile: (619) 645-2061 Attorneys for Complainant		
9 10	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10 11 12	In the Matter of the Accusation Against:	Case No. 3766	
13 14	KERSTIN LYNN ANDERSON 53380 Avenida Herrera La Quinta, CA 92253	ACCUSATION	
15 16	Pharmacy Technician Registration No. TCH 2327		
17	Respondent.		
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19 20	Complainant alleges:		
21		TIES	
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.		
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1	JURISDICTION		
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	f	
3	Consumer Affairs, under the authority of the following laws. All section references are to the		
4	Business and Professions Code unless otherwise indicated.		
5	4. Section 118, subdivision (b), of the Code provides that the suspension, expiration	1,	
6	surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a		
7	disciplinary action during the period within which the license may be renewed, restored, reissued		
8	or reinstated.		
9	5. Section 4300, subdivision (a) of the Code states "Every license issued may be		
10	suspended or revoked."		
11.	STATUTORY AND REGULATORY PROVISIONS		
12	6. Section 482 of the Code states:		
13	Each board under the provisions of this code shall develop criteria to		
14	evaluate the rehabilitation of a person when:		
15	(a) Considering the denial of a license by the board under Section 480; or		
16	(b) Considering suspension or revocation of a license under Section 490.		
17	Each board shall take into account all competent evidence of rehabilitation		
18	furnished by the applicant or licensee.		
19	7. Section 490 of the Code provides, in pertinent part, that a board may suspend	or	
20	revoke a license on the ground that the licensee has been convicted of a crime substantially		
21	related to the qualifications, functions, or duties of the business or profession for which the		
22	license was issued.		
23	8. Section 493 of the Code states:		
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25	to suspend or revoke a license or otherwise take disciplinary action against a		
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27	been convicted of a crime substantially related to the qualifications, functions, and		
28	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,		
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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, functions, and duties of the licensee in question.

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

9. Section 4301 of the Code states:

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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.

(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.

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	10. California Code of Regulations, title 16, section 1769, states:		
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2	(b) When considering the suspension or revocation of a facility or a		
3	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		
4	his present eligibility for a license will consider the following criteria:		
5	(1) Nature and severity of the act(s) or offense(s).		
6	(2) Total criminal record.		
7	(3) The time that has elapsed since commission of the act(s) or offense(s).		
8	(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.		
10 11	11. California Code of Regulations, title 16, section 1770, states:		
12	For the purpose of denial, suspension, or revocation of a personal or facility		
13	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		
14	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		
15	perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.		
16	COST RECOVERY		
17	12. Section 125.3 of the Code provides, in pertinent part, that the Board may request		
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19	the administrative law judge to direct a licentiate found to have committed a violation or		
20	violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation		
21	and enforcement of the case.		
22	FIRST CAUSE FOR DISCIPLINE		
23	(July 27, 2009 Conviction for DUI on December 2, 2008)		
24	13. Respondent is subject to disciplinary action under sections 490 and 4301(1) of the		
25	Code in that she was convicted of a crime that is substantially related to the qualifications, duties,		
26	and functions of a pharmacy technician. The circumstances are as follows:		
27	a. On or about July 27, 2009, in a criminal proceeding entitled <i>The People of the</i>		
28	State of California v. Kerstin Lynn Anderson, in Riverside County Superior Court case number		
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INM194834, Respondent was convicted on her plea of guilty for violating Vehicle Code section 23152(a), driving under the influence of alcohol and Vehicle Code section 23152(b), driving with a blood alcohol content of .08 or more, with an enhancement of Vehicle Code section 23578, blood alcohol concentration of 0.15 and more, by weight, misdemeanors.

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

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

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SECOND CAUSE FOR DISCIPLINE

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

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

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1	DISCIPLINE CONSIDERATIONS	
2	15. To determine the degree of discipline, if any, to be imposed on Respondent,	
3	Complainant alleges that on July 22, 2008, the Board issued a Letter of Admonishment to	
4	Respondent on the grounds that Respondent was convicted on February 9, 2007 in The People of	
5	the State of California v. Kerstin Lynn Anderson, in Riverside County Superior Court case	
6	number INM174151 for violating Vehicle Code section 23152(a), driving under the influence of	
7	alcohol, a misdemeanor with an enhancement under Vehicle Code section 23578 for driving with	
8	a blood alcohol content in excess of .20 percent, a misdemeanor on December 22, 2006.	
9	PRAYER	
10	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
11	and that following the hearing, the Board of Pharmacy issue a decision:	
12	1. Revoking or suspending Pharmacy Technician Registration Number TCH 2327,	
13	issued to Kerstin Lynn Anderson;	
14	2. Ordering Kerstin Lynn Anderson to pay the Board of Pharmacy the reasonable costs	
15	of the investigation and enforcement of this case, pursuant to Business and Professions Code	
16	section 125.3;	
17	3. Taking such other and further action as deemed necessary and proper.	
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20	DATED: <u>023/10</u> VIRGINIA HEROLD	
-21	Executive Officer Board of Pharmacy	
22	Department of Consumer Affairs State of California	
23	Complainant	
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