

1 KAMALA D. HARRIS
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 KIMBERLEE D. KING
Deputy Attorney General
4 State Bar No. 141813
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 3774

13 **ALAN LEE DAY**
a.k.a., AL DAY
14 **a.k.a., ALLAN LEE DAY**
a.k.a., ALLEN DAY
15 **a.k.a., ALLEN LEE DAY**
21801 Roscoe Blvd., #335
Canoga Park, CA 91304

A C C U S A T I O N

16 Pharmacy Technician License No. TCH 25566

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about April 21, 1998, the Board of Pharmacy (Board) issued Pharmacy
24 Technician License No. TCH 25566 to Alan Lee Day, also known as Al Day, Allan Lee Day,
25 Allen Day, and Allen Lee Day (Respondent). The Pharmacy Technician License was in full force
26 and effect at all times relevant to the charges brought herein and will expire on September 30,
27 2011, unless renewed.

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JURISDICTION

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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.

STATUTORY PROVISIONS

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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 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 490 states, in pertinent part:

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 4300 provides, in pertinent part, that every license issued by the Board is
25 subject to discipline, including suspension or revocation.

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1 7. Section 4301 states, in pertinent part:

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

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

9 "(g) Knowingly making or signing any certificate or other document that falsely
10 represents the existence or nonexistence of a state of facts.

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

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17 "(i) The conviction of a crime substantially related to the qualifications, functions, and
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
20 substances or of a violation of the statutes of this state regulating controlled substances or
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
23 The board may inquire into the circumstances surrounding the commission of the crime, in order
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment.”

6 **REGULATORY PROVISIONS**

7 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

8 "For the purpose of denial, suspension, or revocation of a personal or facility license
9 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
10 crime or act shall be considered substantially related to the qualifications, functions or duties of a
11 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
12 licensee or registrant to perform the functions authorized by his license or registration in a manner
13 consistent with the public health, safety, or welfare."

14 **COST RECOVERY**

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

19 10. **CONTROLLED SUBSTANCE**

20 "Marijuana," is a schedule I controlled substance as defined in Health and Safety Code
21 section 11054, subdivision (d)(13) and categorized as a dangerous drug pursuant to section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Convictions of Substantially Related Crimes)**

24 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
25 490, in conjunction of California Code of Regulations, title 16, section 1770, in that Respondent
26 was convicted of crimes substantially related to the qualifications, functions or duties of a
27 licensed pharmacy technician, as follows:

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1 a. On or about May 7, 2009, after pleading nolo contendere, Respondent was convicted
2 of one felony count of violating Penal Code section 666 [petty theft with prior jail term] in the
3 criminal proceeding entitled *The People of the State of California v. Allen Lee Day* (Super. Ct.
4 Los Angeles County, 2009, No. SA070559). The Court sentenced Respondent to 180 days in Los
5 Angeles County Jail and placed him on 3 years formal probation, with terms and conditions. The
6 circumstances surrounding the conviction are that on or about March 7, 2009, Respondent entered
7 a Rite Aid Store, in Culver City, CA, selected six cans of beer, put them in his short pockets, and
8 walked past the cash register without paying for the beer. He was subsequently arrested for
9 violating Penal Code section 211 [robbery].

10 b. On or about March 2, 2009, after pleading nolo contendere, Respondent was
11 convicted of one misdemeanor count of violating Penal Code section 242-243, subdivision (e) (1)
12 [battery] in the criminal proceeding entitled *The People of the State of California v. Alan Lee Day*
13 (Super. Ct. Los Angeles County, 2009, No. 9SR01044). The Court sentenced Respondent to 45
14 days in Los Angeles County Jail and placed him on 3 years probation, with terms and conditions.
15 The circumstances surrounding the conviction are that on or about March 1, 2009, Respondent
16 and the victim had a verbal argument. He grabbed the victim, hit her on top of her head,
17 approximately 3 to 4 times with a closed fist, and walked out of the motel.

18 c. On or about September 10, 2008, after pleading nolo contendere, Respondent was
19 convicted of one misdemeanor count of violating Penal Code section 243 subdivision (e)(1)
20 [battery] in the criminal proceeding entitled *The People of the State of California v. Alan Lee Day*
21 (Super. Ct. Los Angeles County, 2008, No. 8PS03923). The Court sentenced Respondent to 7
22 days in Los Angeles County Jail and placed him on 3 years probation, with terms and conditions.
23 The circumstances surrounding the conviction are that on or about September 1, 2008,
24 Respondent and the victim had a verbal argument. Respondent pushed the victim, hit her
25 numerous times, slammed her head multiple times into a sofa backing, and threw things around
26 the house at her.

27 d. On or about April 27, 2007, after pleading nolo contendere, Respondent was
28 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)

1 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*
2 *the State of California v. Alan Lee Day* (Super. Ct. Los Angeles County, 2007, No. 7VY00655).
3 The Court sentenced Respondent to 192 hours in Los Angeles County Jail and placed him on
4 probation for a period of 48 months, with terms and conditions.

5 The circumstances surrounding the conviction are that on or about February 11, 2007,
6 Respondent drove a vehicle while under the influence of alcohol or drugs, collided with a
7 Department of Water and Power power pole, and fled the scene of the accident on foot. While
8 speaking to Respondent, the Los Angeles Police Department Officer detected an alcoholic odor
9 emitting from his mouth and person. He was observed to have red, bloodshot, watery eyes, loud
10 speech, and an unsteady gait. When asked if he had been drinking, Respondent admitted to
11 drinking one beer which he claimed that he bought from a liquor after the collision before he was
12 detained. He submitted to a Preliminary Alcohol Screening (PAS) Test that resulted in a blood-
13 alcohol content of 0.15% on the first reading and 0.16% on the second reading. During a search
14 of Respondent's vehicle, the officer found a sunglass case on the passenger floorboard that
15 contained a green leafy substance resembling that of marijuana. He was subsequently arrested for
16 violating Vehicle Code section 23152, subdivision (a) [driving while under the influence of
17 alcohol or drugs], Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and
18 more, by weight, of alcohol in his blood], Vehicle Code section 20002, subdivision (a) [hit and
19 run: property damage], and Vehicle Code section 23222, subdivision (b) [possession of 1 ounce
20 or less of marijuana while driving]. During the booking procedure, Respondent repeatedly yelled
21 obscenities at the officers and refused to submit to a breath or blood chemical test.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol)**

24 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
25 that on or about February 11, 2007, Respondent used alcoholic beverages to an extent or in a
26 manner dangerous or injurious to himself, any person, or the public, when he drove a vehicle
27 while under the influence of alcohol or drugs and while having approximately 0.16% of alcohol

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1 in his blood. Complainant refers to, and by this reference incorporates, the allegations set forth
2 above in paragraph 11, subparagraph (d), as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, or Deceit)**

5 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
6 that on or about September 8, 2008, March 1, 2009, and March 7, 2009, Respondent committed
7 acts involving moral turpitude, dishonesty, fraud, or deceit. Complainant refers to, and by this
8 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) through
9 (c), inclusive, as though set forth fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

12 13. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
13 that on or about September 15, 2009, Respondent knowingly made a false statement of fact to the
14 Board of Pharmacy, by failing to disclose 3 conviction cases against him on his pharmacy
15 technician license renewal application. Respondent marked "No" to the question asking if he had
16 been convicted of any crime since his last renewal in 2007. Complainant refers to, and by this
17 reference incorporates, the allegations set forth above in paragraph 11, subparagraphs (a) through
18 (c), inclusive, as though set forth fully.

19 **DISCIPLINARY CONSIDERATIONS**

20 14. To determine the degree of discipline, if any to be imposed on Respondent,
21 Complainant alleges the following:

22 a. On or about February 22, 2000, Respondent was convicted of one misdemeanor count
23 of violating Vehicle Code section 23103 [reckless driving] in the criminal proceeding entitled *The*
24 *People of the State of California v. Alan Lee Day* (Super. Ct. Los Angeles County, 2000, No.
25 OWL00396). The Court sentenced Respondent to 5 days in Los Angeles County Jail and placed
26 him on probation for a period of 36 months, with terms and conditions. The circumstances
27 surrounding the conviction are that on or about January 30, 2000, Respondent drove a vehicle
28 upon a highway in a willful or wanton disregard for the safety of persons or property. He was

1 arrested for violating Vehicle Code section 23153, subdivision (a) [driving under the influence of
2 alcohol or drugs, resulting in injuries to another]. On or about January 30, 2000, the Board
3 conducted a complaint investigation, CI 2000 20034, regarding Respondent's 2000 driving under
4 the influence arrest. The investigation was mediated and closed on July 19, 2001.

5 b. On or about August 30, 1999, Respondent was convicted of one misdemeanor count
6 of violating Penal Code section 508 [embezzlement by employee] in the criminal proceeding
7 entitled *The People of the State of California v. Alan Lee Day* (Super. Ct. Los Angeles County,
8 2000, No. 9SM02651). The Court sentenced Respondent to 1 day in Los Angeles County Jail
9 and placed him on 3 years probation, with terms and conditions. The circumstances surrounding
10 the conviction are that on or about August 30, 1999, Respondent a clerk, agent, or servant
11 fraudulently appropriated for his own use the property of his employer. On or about January 30,
12 2000, the Board conducted a complaint investigation, CI 1999 18839, regarding Respondent's
13 1999 embezzlement by employee arrest. The investigation was mediated and closed on July 19,
14 2001.

15 c. On or about October 28, 1982, Respondent was convicted of one felony count of
16 violating Penal Code section 487.1 [grand theft of property] in the criminal proceeding entitled
17 *The People of the State of California v. Alan Lee Day* (Super. Ct. Los Angeles County, 1982, No.
18 A902616). The Court sentenced Respondent to 2 years in State Prison and denied probation. The
19 circumstances surrounding the conviction are that on or about September 29, 1982, Respondent
20 stole, took, or carried away the personal property of another.

21 **PRAYER**

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

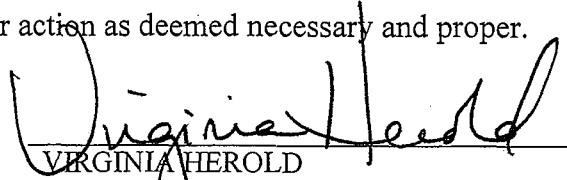
- 24 1. Revoking or suspending Pharmacy Technician License No. TCH 25566, issued to
25 Respondent;
- 26 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
27 enforcement of this case, pursuant to section 125.3; and

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

DATED: 7/14/11



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

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