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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. 3815

12 **DENISE CHRISTINE EAVES**  
13 **11273 Demaret Drive**  
14 **Beaumont, CA 92223**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration Number**  
16 **No. TCH 50501**

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 August 25, 2003, the Board of Pharmacy issued Pharmacy Technician  
25 Registration Number TCH 50501 to Denise Christine Eaves (Respondent). The Pharmacy  
26 Technician Registration Number was in full force and effect at all times relevant to the charges  
27 brought herein and will expire on January 31, 2011, unless renewed.  
28

**JURISDICTION**

1  
2           3.     This Accusation is brought before the Board of Pharmacy (Board), Department of  
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,  
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."

**STATUTORY/REGULATORY PROVISIONS**

11  
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:

24                 Notwithstanding any other provision of law, in a proceeding conducted by a  
25 board within the department pursuant to law to deny an application for a license or  
26 to suspend or revoke a license or otherwise take disciplinary action against a  
27 person who holds a license, upon the ground that the applicant or the licensee has  
28 been convicted of a crime substantially related to the qualifications, functions, and  
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,

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  
substantially related to the qualifications, functions, and duties of the licensee in  
question.

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

5 9. Section 4301 of the Code states:

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

9 . . . .

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

13 . . . .

14 (h) The administering to oneself, of any controlled substance, or the use of  
15 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
16 dangerous or injurious to oneself, to a person holding a license under this chapter,  
17 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.

18 . . . .

19 (l) The conviction of a crime substantially related to the qualifications,  
20 functions, and duties of a licensee under this chapter. The record of conviction of  
21 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
22 States Code regulating controlled substances or of a violation of the statutes of this  
23 state regulating controlled substances or dangerous drugs shall be conclusive  
24 evidence of unprofessional conduct. In all other cases, the record of conviction  
25 shall be conclusive evidence only of the fact that the conviction occurred. The  
26 board may inquire into the circumstances surrounding the commission of the  
27 crime, in order to fix the degree of discipline or, in the case of a conviction not  
28 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

1 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
2 the verdict of guilty, or dismissing the accusation, information, or indictment.

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

4 . . . .

5 (b) When considering the suspension or revocation of a facility or a  
6 personal license on the ground that the licensee or the registrant has been  
7 convicted of a crime, the board, in evaluating the rehabilitation of such person and  
8 his present eligibility for a license will consider the following criteria:

9 (1) Nature and severity of the act(s) or offense(s).

10 (2) Total criminal record.

11 (3) The time that has elapsed since commission of the act(s) or offense(s).

12 (4) Whether the licensee has complied with all terms of parole, probation,  
13 restitution or any other sanctions lawfully imposed against the licensee.

14 (5) Evidence, if any, of rehabilitation submitted by the licensee.

15 11. California Code of Regulations, title 16, section 1770, states:

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

23 **COST RECOVERY**

24 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request  
25 the administrative law judge to direct a licentiate found to have committed a violation or  
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
27 and enforcement of the case.  
28

**FIRST CAUSE FOR DISCIPLINE**

**(February 11, 2010 Conviction for DUI on March 27, 2009)**

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

a. On or about February 11, 2010, in a criminal proceeding entitled *The People of the State of California v. Denise Christine Eaves*, in San Bernardino County Superior Court case number TSB902393, Respondent was convicted on her plea of guilty for violation of Vehicle Code section 23152(b), driving with a blood alcohol content of .08 percent or more, a misdemeanor.

b. As a result of her conviction, Respondent was placed on summary probation for 3 years, ordered to serve 17 days in jail, pay all applicable fines, fees and restitution and to enroll and complete a nine month First Offender Alcohol Program.

c. The circumstances that led to the conviction were that on or about March 27, 2009, an officer from the California Highway Patrol observed Respondent's vehicle driving at a speed of greater than 80 mph, following vehicles to the front less than one car length away and changing lanes rapidly while traveling eastbound on SR-210 west of Highland Avenue. The officer activated his lights but the vehicle did not respond to them. The vehicle responded to his siren and pulled to the right shoulder in an unsafe location. The officer advised the driver of the vehicle on the public address system to exit the freeway and the vehicle began to drive approximately 40 mph on the shoulder and stopped on the shoulder again. The officer for a second time asked the driver to exit the freeway and the vehicle drove on the shoulder and stopped again. The officer for a third time asked the driver to exit the freeway, which it did at Baseline Road. After the officer initiated a traffic stop, the driver of the high speed and unsafe lane changing vehicle was identified as Respondent. The officer observed that Respondent's eyes were red and droopy and that she had a strong odor of an alcoholic beverage emitting from within her vehicle. When asked by the officer how much she had to drink, Respondent admitted "enough." When she stepped out of her vehicle, she told the officer to "just take me to jail." Her

1 speech was extremely slurred and she was not wearing any shoes. Respondent admitted to the  
2 officer that she had consumed 3 glasses of wine prior to driving and that she felt "buzzed." The  
3 officer attempted to explain and demonstrate the field sobriety tests; Respondent performed  
4 poorly on one of the tests and said "just take me to jail." Based on Respondent's inability to  
5 successfully perform one of the field sobriety tests and her objective symptoms, the officer  
6 arrested Respondent for driving under the influence. Upon arrest, Respondent elected to take a  
7 breath test and her results were .23 percent and .23 percent at 2322 hours and 2325 hours  
8 respectively.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(February 11, 2010 Conviction for Hit and Run on March 30, 2009)**

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

14 a. On or about February 11, 2010, in a criminal proceeding entitled *The People of*  
15 *the State of California v. Denise Christine Eaves*, in San Bernardino County Superior Court Case  
16 No. TSB902000, Respondent was convicted on her plea of guilty for violation of Vehicle Code  
17 section 20002, hit and run with property damage, a misdemeanor.

18 b. As a result of her conviction, Respondent was placed on conditional probation  
19 for a period of 3 years, ordered to serve 14 days in jail and to possibly pay restitution.

20 c. The facts that led to the conviction were that on or about March 30, 2009,  
21 Respondent's vehicle was traveling southbound on Shasta Avenue in Highland, California.  
22 Respondent's vehicle did not stop at the intersection of Shasta Avenue and 6th Street, made an  
23 eastbound turn onto 6th Street and collided with another vehicle. Respondent continued  
24 eastbound on 6th Street, failing to stop after the accident. A witness provided the license plate  
25 number for Respondent's vehicle and Respondent admitted to her friend and the police that she  
26 had hit the other vehicle. Respondent was cited for violating Vehicle Code section 20002, hit and  
27 run, a misdemeanor.

