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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. 3850

13 **MICHAEL TUFO, a.k.a. MICHAEL**  
14 **BIAGO TUFO, a.k.a. MICHAEL BIAGIO**  
15 **TUFO**  
16 **53 Southridge Way**  
17 **Daly City, CA 94014**  
18 **Pharmacy Technician License No. TCH**  
19 **33538**

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

20 Respondent.

21 Complainant alleges:

22 PARTIES

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

25 2. On or about June 15, 2000, the Board of Pharmacy issued Pharmacy Technician  
26 License Number TCH 33538 to Michael Tufo, also known as Michael Biago Tufo, also known as  
27 Michael Biagio Tufo (Respondent). The Pharmacy Technician License was in full force and  
effect at all times relevant to the charges brought in this Accusation and will expire on September  
30, 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 provides, in pertinent part, that any license issued by the Board may be suspended or revoked.

5. Section 118, subdivision (b), of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY/REGULATORY PROVISIONS

6. Section 4301 of the Code states:

“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.

...

“(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

...

“(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 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

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

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

#### 22 DRUGS

23 8. “Cocaine” is a Schedule II drug as listed under California Health and Safety Code  
24 section 11055, subdivision (b)(6). It is a highly addictive recreational drug.

#### 25 COST RECOVERY

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

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)  
5 (Bus. & Prof. Code § 4301(h))

6 10. Respondent has subjected his Pharmacy Technician’s License to disciplinary action  
7 under Code section 4301, subdivision (h), in that he engaged in unprofessional conduct by using  
8 alcohol in a dangerous manner. The circumstances are as follows:

9 11. On or about February 18, 2010, at approximately 1:10 a.m., two California Highway  
10 Patrol (CHP) officers (Officer 1 and Officer 2), were on routine patrol in San Mateo County, in a  
11 clearly marked CHP vehicle. The officers observed Respondent’s gold Sports Utility Vehicle  
12 traveling in the northbound direction on Interstate 280 at a high rate of speed, while completely  
13 straddling the #2 and #3 lanes. The officers entered the freeway and obtained a bumper pace on  
14 the vehicle. The officers determined that Respondent was travelling at approximately 77 miles-  
15 per-hour. The officers observed Respondent’s SUV weaving in and out of its lane, in violation of  
16 California Vehicle Code (“CVC”) section 21658, subdivision (a). The officers activated the  
17 forward red lights and initiated an enforcement stop. The SUV slowly pulled to the right shoulder  
18 and stopped.

19 12. Officer 1 approached the right side of Respondent’s SUV and illuminated the right  
20 side of the passenger compartment with his flashlight, and observed Respondent in the driver’s  
21 seat. Officer 1 informed Respondent that he observed him weaving on the freeway and Officer 1  
22 wanted to ensure that Respondent was okay. Respondent stated that he was “totally fine.”  
23 Respondent informed Officer 1 that he was coming from a bar in San Mateo. Officer 1 detected  
24 the odor of an alcoholic beverage emitting from inside of the vehicle. As Respondent spoke, his  
25 speech was fast and slurred. Officer 1 requested Respondent’s driver’s license, which identified  
26 Respondent as the driver of the SUV. When Officer 1 asked Respondent whether he had been  
27 drinking, Respondent stated that he had consumed one beer. Officer 1 directed Respondent to  
28 walk to the back of the SUV, where he proceeded to ask Respondent a series of pre-field sobriety

1 questions. Officer 1 continued to smell the odor of alcohol on Respondent's breath and body.  
2 Officer 1 directed Respondent in a series of field sobriety tests, which Respondent failed to  
3 perform as explained or demonstrated. Officer 1 administered two Preliminary Alcoholic  
4 Screening Device tests to Respondent. The results of the first test showed that Respondent had a  
5 Blood Alcohol Content of .098%, and the results of the second test showed a Blood Alcohol  
6 Content of .097%. Based upon Respondent's poor driving, his objective signs and symptoms of  
7 intoxication, his unsatisfactory performance of the field sobriety tests, and his admission that he  
8 had consumed alcohol prior to driving, Officer 1 arrested Respondent at approximately 1:31 a.m.  
9 for violation of CVC 23152, subdivision (a) (driving under the influence of a drug or alcohol, or  
10 both). Respondent was later charged with violating this section of the vehicle code as well as  
11 violating CVC 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or  
12 higher), both misdemeanors.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct – Violation of Statute Regulating Controlled Substances)  
15 (Bus. & Prof. Code § 4301(j))

16 13. Complainant realleges the allegations contained in paragraphs 10 through 12 above,  
17 and incorporates them by reference as if fully set forth here.

18 14. Respondent has subjected his Pharmacy Technician's License to disciplinary action  
19 under Code section 4301, subdivision (j), in that he violated California Health and Safety Code  
20 section 11350, subdivision (a) (possession of a controlled substance), a statute of this State  
21 regulating controlled substances and dangerous drugs. The circumstances are as follows:

22 15. On or about February 18, 2010, at approximately 1:31 a.m., after Respondent was  
23 placed under arrest for violating CVC 23152, subdivision (a) (driving under the influence of a  
24 drug or alcohol, or both), he was searched by Officer 1 pursuant to CHP policy. Officer 1  
25 discovered a small plastic baggie containing a white substance in Respondent's left front pocket,  
26 which Officer 1 believed to be cocaine. Respondent was transported to San Mateo County Jail  
27 (SMCJ) for a chemical test. The white substance in the baggie was tested and proved positive for  
28 cocaine.

1           16. On or about February 18, 2010, at approximately 2:28 a.m., while at SM CJ,  
2 Respondent was advised of his Miranda rights by Officer 1, which he waived. Respondent told  
3 Officer 1 that the substance in the baggie was cocaine. Respondent stated that he acquired the  
4 cocaine from a friend, and the last time he had used the cocaine was around 8:30 p.m. that  
5 evening. Respondent stated that the cocaine was worth approximately \$40, and that he had also  
6 used it the previous Monday. Respondent further admitted that he had consumed three large Bud  
7 Light beers that night and not just one beer. Respondent was later charged with violating  
8 California Health and Safety Code section 11350, subdivision (a) (Possession of Controlled  
9 Substance), a felony.

10   THIRD CAUSE FOR DISCIPLINE

11   (Unprofessional Conduct - Conviction)

12   (Bus. & Prof. Code § 4301(I); Cal. Code Regs., tit. 16, § 1770)

13           17. Complainant realleges the allegations contained in paragraphs 10 through 12 above,  
14 and incorporates them by reference as if fully set forth here.

15           18. Respondent has subjected his Pharmacy Technician's License to disciplinary action  
16 under Code section 4301, subdivision (l), and California Code of Regulations, title 16, section  
17 1770, in that he was convicted of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee. The circumstances are that on or about August 30, 2010, in a criminal case  
19 entitled *The People of the State of California v. Michael Biago Tufo*, in the Superior Court of San  
20 Mateo County, Case Number NF392444A, Respondent was convicted by plea of nolo contendere  
21 of one count of violating CVC section 23152, subdivision (b) (driving under the influence with a  
22 .08 percent or higher blood alcohol content), a misdemeanor. Respondent was sentenced to three  
23 years of probation and two days in jail. Respondent was further ordered to: (1) pay various fees  
24 and fines; (2) obey all laws and orders of the court; (3) enter and complete the First Offender  
25 Program; (4) not drive with any alcohol in his blood during the probationary period; and (5)  
26 submit to alcohol use test whenever directed by a probation officer or peace officer.  
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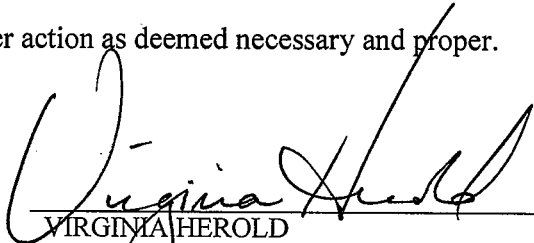
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 33538, issued to Michael Tufo, also known as Michael Biago Tufo, also known as Michael Biagio Tufo;
2. Ordering Michael Tufo, also known as Michael Biago Tufo, also known as Michael Biagio Tufo 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: 2/23/11



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

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