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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3915

11 **JOHN ROBERT NELSON**
12 **10205 Plainview Ave., #6**
13 **Tujunga, CA 91042**

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **75675**

Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 21, 2007, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 75675 to John Robert Nelson (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and expires on January 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board, under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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STATUTORY PROVISIONS

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

5. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

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

7. Section 4301 states, in pertinent part:

"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

1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

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

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8 "(l) The conviction of a crime substantially related to the qualifications, functions, and
9 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
10 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
11 substances or of a violation of the statutes of this state regulating controlled substances or
12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
14 The board may inquire into the circumstances surrounding the commission of the crime, in order
15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
16 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
19 of this provision. The board may take action when the time for appeal has elapsed, or the
20 judgment of conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
24 indictment."

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26 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of or conspiring to violate any provision or term of this chapter or of the applicable

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1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency.”

3 8. Section 4060 states, in pertinent part:

4 "No person shall possess any controlled substance, except that furnished to a person upon
5 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
6 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
7 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
8 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
9 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
10 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."

11 **REGULATORY PROVISIONS**

12 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

19 **CONTROLLED SUBSTANCE**

20 10. "Xanax" is the brand name for Alprazolam, an anti-anxiety benzodiazepine. It is a
21 Schedule IV controlled substance as designated by Health and Safety Code section 11057,
22 subdivision (d)(1) and is categorized as a dangerous drug pursuant to section 4022.

23 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
5 Respondent has been convicted of crimes substantially related to the qualifications, functions or
6 duties of a pharmacy technician, as follows:

7 a. On or about October 27, 2010 after pleading nolo contendere, Respondent was
8 convicted of one misdemeanor count of violating Penal Code section 647, subdivision (f)
9 [disorderly conduct/public intoxication] in the criminal proceeding entitled *The People of the*
10 *State of California v. John Robert Nelson* (Super. Ct. San Benito County, 2010, No. CR1001575).
11 The Court placed Respondent on one year of probation, with terms and conditions. The
12 circumstances surrounding the conviction are that on or about July 29, 2010, during an
13 investigation of a disturbance by the Hollister Police Department, Respondent was contacted.
14 While speaking to Respondent, the officer detected a strong odor of an alcoholic beverage
15 emitting from his person. He was observed to have bloodshot watery eyes, slurred speech, and an
16 unsteady gait/balance. Respondent admitted to jumping on the hood of his mother's car, because
17 he was angry that the keys were taken away from him. During the booking procedure,
18 Respondent was found to be in possession of a bottle of Alprazolam. When asked about the
19 prescription medication that did not belong to him, Respondent admitted to filling his mother's
20 prescription for his own personal use, in violation of Business and Profession Code section 4060
21 [possession of a controlled substance without a valid prescription].

22 b. On or about May 25, 2010, after pleading nolo contendere, Respondent was convicted
23 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
24 while having 0.08% and more, by weight, of alcohol in his blood] in the criminal proceeding
25 entitled *The People of the State of California v. John Robert Nelson* (Super. Ct., Los Angeles
26 County, 2010, No. 9LT01813). The Court placed Respondent on four years probation, with terms
27 and conditions. The circumstances surrounding the conviction are that on or about October 11,
28 2009, during an investigation by the Long Beach Police Department, Respondent was contacted.

1 While speaking to Respondent the officer detected a strong odor of an alcoholic beverage on his
2 breath and person. He was observed to have a flushed face, red watery eyes, and his speech was
3 slurred. When asked to step out of the vehicle, Respondent stumbled as he walked and had poor
4 balance. When asked, Respondent admitted that he had one 24-ounce can of "Juice." He
5 indicated that "Juice" was a type of beer with an energy drink inside. During the booking
6 procedure, Respondent submitted to a breath test that revealed a blood alcohol level of 0.24% on
7 the first reading and 0.23% on the second reading.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol)**

10 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
11 that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to
12 himself, another person, or the public, as follows:

13 a. On or about July 29, 2010, Respondent was under the influence of alcohol, in a public
14 place, and unable to provide for his safety or the safety of others, as described above in paragraph
15 10, subparagraph (a).

16 b. On or about October 11, 2009, Respondent operated a vehicle while having
17 approximately 0.24% of alcohol in his blood, as described above in paragraph 10, subparagraph
18 (b).

19 c. On or about January 19, 2008, during an investigation of a traffic collision by the
20 California Highway Patrol, Respondent was contacted. While speaking to Respondent, the
21 officer detected a strong odor of an alcoholic beverage emitting from his breath. He had slurred
22 speech, bloodshot, red, watery eyes, and walked with an unsteady gait. When asked, Respondent
23 admitted that he drank one 24 ounce beer earlier that evening. While at the scene, Respondent
24 submitted to a Preliminary Alcohol Screening Test (PAS) that revealed a blood alcohol level of
25 0.13% on the first reading and 0.12% on the second reading. Respondent was subsequently
26 arrested for violating Vehicle Code section 23152, subdivision (a) [driving under the influence of
27 alcohol or drugs] and Vehicle Code Section 23152, subdivision (b) [driving while having 0.08%
28 and more, by weight, of alcohol in his blood].

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Possession of a Controlled Substance without a Valid Prescription)**

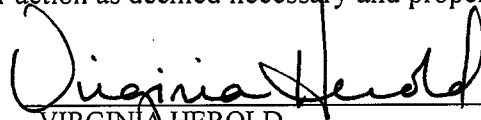
3 12. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
4 (o), for violating section 4060, in that or on about July 29, 2010, Respondent was found to be in
5 possession of a controlled substance without a valid prescription, as described above in paragraph
6 10, subparagraph (a).

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician Registration No. TCH 75675, issued
11 to Respondent;
- 12 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
13 enforcement of this case, pursuant to section 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 8/14/12

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

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