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

12 **In the Matter of the Accusation Against:**
13 **DOUGLAS MARTIN FAUCHER00**
171 Montebello Street
14 Chula Vista, CA 91910
15 **Pharmacist License No. RPH 37890**
16 **Respondent.**

Case No. 4030

A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

20 1.00 Virginia Herold (Complainant) brings this Accusation solely in her official capacity00
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2.00 On or about September 2, 1983, the Board of Pharmacy issued Pharmacist License 00
23 No. RPH 37890 to Douglas Martin Faucher (Respondent). The Pharmacist License was in full
24 force and effect at all times relevant to the charges brought herein and will expire on February 28,00
25 2013, unless renewed. 00

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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 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation 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.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 provides, in pertinent part, that when considering the suspension or revocation of a license under Section 490, each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has 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, 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."

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9. 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.

.....

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

.....

(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 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. Code section 4060 states, in pertinent part:

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

11. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

REGULATORY PROVISIONS

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

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(b) When considering the suspension or revocation of a facility or a 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 his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (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.

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

For the purpose of denial, suspension, or revocation of a personal or facility 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 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 perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

14. Code section 4060 states, in pertinent part:

“No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

15. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

COST RECOVERY

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

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1 DRUGS

2 17. Methamphetamine is a Schedule II controlled substance as designated by Health
3 and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and
4 Professions Code section 4022.

5 18. Clonazepam, generic name for Klonopin, is a Schedule IV controlled substance
6 under California Health and Safety Code section 11057(d)(7), and is a dangerous drug pursuant to
7 Business and Professions Code section 4022.

8 **FIRST CAUSE FOR DISCIPLINE**

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10 **(December 9, 2009 Criminal Conviction for Reckless Driving Involving Alcohol
11 on July 31, 2009)**

12 19. Respondent has subjected his license to discipline under sections 490 and 4301,
13 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
14 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

15 20. On or about December 9, 2009, in a criminal proceeding entitled *People of the State*
16 *of California v. Douglas Martin Faucher*, in the San Diego County Superior Court, South County
17 Division, in Case No. S232650, Respondent was convicted on his plea of guilty to violating
18 Vehicle Code section 23103, subdivision (a) (Reckless Driving) per Vehicle Code section
19 23103.5, a misdemeanor. As a result of Respondent's plea, the Court dismissed the charges that
20 had originally been filed for violation of Vehicle Code sections 23152(a) (Driving Under the
21 Influence of Alcohol) and 23152(b) (Driving Under the Influence of Alcohol With a BAC of
22 0.08% Or More).

23 21. The circumstances surrounding the conviction are that on or about July 31, 2009, at
24 approximately 2000 hours, Chula Vista Police Officers performed a traffic stop on a vehicle that
25 made a quick right turn near a DUI checkpoint. Officers followed the vehicle into a parking lot
26 and witnessed Respondent stumble as he got out of his vehicle. Respondent admitted to officers
27 that he had been drinking that evening and could not recall how much he had to drink.
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1 Respondent told officers that he takes Hytrin, which made him drowsy. Respondent failed a field
2 sobriety test and was arrested for driving under the influence of alcohol. Respondent was
3 transferred to the Chula Vista Police Department where a breath test was administered. The
4 results of the breath test were 0.10% BAC.

5 22. As a result of the conviction Respondent was placed on three (3) years summary
6 probation and ordered to violate no laws, pay various fines and fees, enroll in and complete a
7 three-month First Conviction Program, complete a MADD program, and not drive without a valid
8 driver's license and liability insurance.

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10 **SECOND CAUSE FOR DISCIPLINE**

11 **(November 17, 2010 Criminal Conviction for Possession of Controlled Substances
12 on October 14, 2010)**

13 23. Respondent has subjected his license to discipline under sections 490 and 4301,
14 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
15 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

16 24. On or about April 26, 2010, in a criminal proceeding entitled *People of the State of*
17 *California v. Douglas Martin Faucher*, in the San Diego County Superior Court, South County
18 Division, in Case No. S242897. Respondent was convicted on his plea of guilty to violating
19 Health and Safety Code sections 11377(a) (Possession of a Controlled Substance –
20 Methamphetamine), a misdemeanor, and 11375(b)(2) (Possession of Designated Controlled
21 Substance – Clonazepam), misdemeanors. As a result of Respondent's plea, the Court dismissed
22 the original charge that had been filed for violation of Health and Safety Code section 11550
23 (Under the Influence of a Controlled Substance), a misdemeanor.

24 25. The circumstances surrounding the conviction are that on or about October 14, 2010,
25 at approximately 0540 hours, Chula Vista Police Officers made contact with Respondent in the
26 300 block of Del Mar Avenue in Chula Vista, CA. Respondent showed symptoms of being under
27 the influence of a controlled substance, as Respondent had red, watery eyes, an odor of an
28 alcoholic beverage about his person, droopy eyes, a thick white coating on his tongue, was

1 sweating, and appeared to be falling asleep. Respondent was placed under arrest and transported
2 to the Chula Vista Police Department Jail for a Drug Recognition Expert (DRE) Evaluation.
3 While at the jail, three white pills identified as Klonopin, a schedule IV drug, and a white
4 crystalline substance that tested presumptively positive for methamphetamine, were located in
5 Respondent's wallet. While at the jail, Respondent provided a breath test, which came back at
6 .087%. Respondent was booked for being in possession of a controlled substance and for being
7 under the influence of a controlled substance.

8 26. As a result of the conviction, Respondent was placed on three (3) years summary
9 probation, ordered to pay various fines and fees, complete twenty (20) days in a Public Service
10 Work Program if directed by the Court, and participate in and successfully complete a drug
11 treatment program as directed by the Court. The Court also ordered that Respondent authorize
12 treatment providers and counselors to provide progress reports to the probation officer, follow all
13 rules and regulations of the treatment program, attend AA/NA or other self-help groups as
14 directed by the Court, totally abstain from drinking alcoholic beverages and not be in places
15 where alcohol is the primary source of business, not use or possess any controlled substance
16 (except for work-related purposes) or solicit others to use or possess or associate with others who
17 use or possess any controlled substance, submit to any test for the use of controlled substances
18 and/or alcohol and authorize release of results to the probation officer, submit to search and
19 seizure, and register pursuant to Health and Safety Code section 11590. Respondent was further
20 ordered to obey all laws, not possess any firearms, report any change of address or employment to
21 probation officer within 72 hours, and to obtain the consent of the Court before leaving San Diego
22 County.

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THIRD CAUSE FOR DISCIPLINE

(Use of Alcohol and Controlled Substances in a Manner Dangerous & Injurious to Oneself & the Public)

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27. Respondent has subjected his license to disciplinary action under section 4301, subdivision (h), of the Code in that on or about July 31, 2009, Respondent drove a vehicle with a blood alcohol content of .10%, and on October 14, 2010, was under the influence of controlled substances, which posed a serious risk of injury and/or death to himself and to the public, as detailed in paragraphs 17 and 24, above, which are incorporated here by reference.

FOURTH CAUSE FOR DISCIPLINE

(Multiple Convictions Involving the Use of Alcoholic Beverages)

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28. Respondent has subjected his license to disciplinary action under section 4301, subdivision (k), of the Code in that on or about December 9, 2009, and November 17, 2010, Respondent was convicted in two separate cases on charges involving the consumption of alcoholic beverages and controlled substances, as detailed in paragraphs 17 and 24, above, which are incorporated here by reference.

DISCIPLINARY CONSIDERATIONS

29. To determine the degree if discipline, if any, to be imposed on Respondent for the violations alleged above, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

a. In a prior disciplinary action entitled "*In the Matter of the Accusation Against Douglas Martin Faucher*," Case No. 1789, the Board of Pharmacy adopted the stipulation in settlement as its decision, effective July 25, 1996. The stipulation revoked original licentiate permit No. RPH 27890 to practice pharmacy issued to Douglas Martin Faucher. However, said revocation was stayed and Respondent was placed on probation for five (5) years.

b. The Accusation further alleged, and Respondent admitted, that on or about October 13, 1987, Respondent was convicted on his plea of guilty of violating Vehicle Code section 23152 (driving under the influence of alcohol), in *People v. Douglas Faucher*, San Diego

1 Municipal Court, El Cajon Judicial District, Case No. C74862. Such conduct is substantially
2 related to the qualifications, functions and duties of a pharmacist.

3 c. The Accusation alleged, and Respondent admitted, that on or about October 26, 1993,
4 Respondent was convicted on his plea of guilty of violating of Health and Safety Code sections
5 11377(a) (possession of a controlled substance - Phendimetrazine and Hydrocodone) and
6 11550(a) (under the influence of a controlled substance), and Vehicle Code section 23151
7 (driving under the influence of a controlled substance), in *People v. Douglas Faucher*, San Diego
8 Municipal Court, El Cajon Judicial District, Case No. C144583. Such conduct is substantially
9 related to the qualifications, functions, and duties of a pharmacist.

10 **PRAYER**

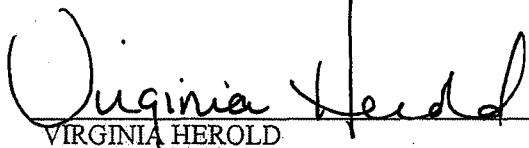
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Board of Pharmacy issue a decision:

13 1. Revoking or suspending Original Pharmacist License Number RPH 37890, issued to
14 Douglas Martin Faucher;

15 2. Ordering Douglas Martin Faucher to pay the Board of Pharmacy the reasonable costs
16 of the investigation and enforcement of this case, pursuant to Business and Professions Code
17 section 125.3;

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

19
20 DATED: 9/1/11


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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28 SD2011800321