

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 4230

12 **JILLIAN FRANCES MCMAHON**
2160 Begley Circle
13 Corona, CA 92881

ACCUSATION

14 **Pharmacy Technician Registration No.**
97033

15
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about May 26, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number 97033 to Jillian Frances McMahon (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein but expired on February 29, 2012, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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 4300 of the Code states:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board, whose
8 default has been entered or whose case has been heard by the board and found
9 guilty, by any of the following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

12 (3) Suspending his or her right to practice for a period not exceeding one
13 year.

14 (4) Revoking his or her license.

15 (5) Taking any other action in relation to disciplining him or her as the board
16 in its discretion may deem proper.

17 (e) The proceedings under this article shall be conducted in accordance with Chapter
18 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government
19 Code, and the board shall have all the powers granted therein. The action shall be
20 final, except that the propriety of the action is subject to review by the superior court
21 pursuant to Section 1094.5 of the Code of Civil Procedure.

22 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
23 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
24 disciplinary action during the period within which the license may be renewed, restored, reissued
25 or reinstated.

26 **STATUTORY AND REGULATORY PROVISIONS**

27 6. Section 482 of the Code states:

28 Each board under the provisions of this code shall develop criteria to evaluate the
rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering 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

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 8. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding conducted by a board
5 within the department pursuant to law to deny an application for a license or to
6 suspend or revoke a license or otherwise take disciplinary action against a person who
7 holds a license, upon the ground that the applicant or the licensee has been convicted
8 of a crime substantially related to the qualifications, functions, and duties of the
9 licensee in question, the record of conviction of the crime shall be conclusive
10 evidence of the fact that the conviction occurred, but only of that fact, and the board
11 may inquire into the circumstances surrounding the commission of the crime in order
12 to fix the degree of discipline or to determine if the conviction is substantially related
13 to the qualifications, functions, and duties of the licensee in question.

14 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
15 'registration.'"

16 9. Section 4301 of the Code states:

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

21 ...

22 (h) The administering to oneself, of any controlled substance, or the use of any
23 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
24 dangerous or injurious to oneself, to a person holding a license under this chapter, or
25 to any other person or to the public, or to the extent that the use impairs the ability
26 of the person to conduct with safety to the public the practice authorized by the
27 license.

28 ...

(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.

(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

1 substantially related to the qualifications, functions, and duties of a licensee under
2 this chapter. A plea or verdict of guilty or a conviction following a plea of nolo
3 contendere is deemed to be a conviction within the meaning of this provision. The
4 board may take action when the time for appeal has elapsed, or the judgment of
5 conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under
7 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
8 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
9 dismissing the accusation, information, or indictment....

10 10. Section 4060 of the Code states:

11 No person shall possess any controlled substance, except that furnished to a person
12 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or
13 naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug
14 order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse
15 practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section
16 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant
17 to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of
18 paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the
19 possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic
21 doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in
22 stock in containers correctly labeled with the name and address of the supplier or
23 producer.

24 Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
25 physician assistant, or a naturopathic doctor, to order his or her own stock of
26 dangerous drugs and devices.

27 11. Health and Safety Code section 11350 provides, in part:

28 (a) Except as otherwise provided in this division, every person who possesses (1)
any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to
practice in this state, shall be punished by imprisonment pursuant to subdivision (h)
of Section 1170 of the Penal Code....

12. Title 16, California Code of Regulations, section 1769, subdivision (b), states:

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.

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

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

6 **DRUGS**

7 14. Cocaine is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code
9 section 4022.

10 **COST RECOVERY**

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(September 30, 2011 Conviction of Possession of Controlled Substances and DUI**
17 **on April 10, 2011)**

18 16. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) for
19 conviction of a crime substantially related to the qualifications, functions, and duties of a
20 pharmacy technician in that on September 30, 2011, Respondent was convicted by her guilty plea
21 in *The People of the State of California v. Jillian Frances McMahon*, Riverside Superior Court
22 Case No. RIF1102567 of violation of Health and Safety Code section 11350(a), possession of a
23 controlled substance, a felony, and violation of Vehicle Code section 23152(a), driving under the
24 influence of alcohol, a misdemeanor. At Respondent's guilty plea to these two charges, the third
25 charge for use of a controlled substance, cocaine, was dismissed. The circumstances are as
26 follows.

27 17. At about 1:00 a.m. on April 10, 2011, detectives of the Corona Police Department
28 were traveling northbound on Rimpau Avenue while patrolling several schools due to recent

1 burglaries. The detectives observed a dark vehicle traveling southbound on the northbound lanes
2 of Rimpau at a high rate of speed. Respondent was the driver of the vehicle. The vehicle weaved
3 into the detectives' lane, forcing Detective V. to change into the next lane to avoid a head on
4 collision. The detectives turned around and followed the vehicle, which continued to weave in
5 and out of traffic. The vehicle turned left and suddenly stopped on the curb. When the detectives
6 attempted a traffic stop, the vehicle drove away. The detectives followed the vehicle to the
7 driveway of a residence. Detective V. approached the vehicle and as he got to the driver's side
8 door, he could smell the odor of alcohol. He noticed that Respondent's eyes were bloodshot and
9 watery. Respondent admitted that she had been drinking and that she had 6 12-ounce beers.
10 Respondent's speech was slurred and she was unsteady on her feet. Respondent was not able to
11 successfully complete the Field Sobriety Tests. Respondent was placed under arrest for driving
12 under the influence of alcohol. Blood tests revealed a blood alcohol content of 0.31% and the
13 presence of cocaine and/or its metabolites.

14 18. In the meantime, Detective J. observed a small, white bundle containing a white,
15 powdery substance on the center console of Respondent's vehicle. The substance, weighing 1.5
16 grams, was tested and determined to be cocaine. Respondent was also charged with possession of
17 cocaine.

18 19. As a result of Respondent's conviction, she was sentenced to 36 months formal
19 probation, ordered into the custody of the Riverside County Sheriff for 120 days, pay fines and
20 fees of about \$2,294.45 and to participate and complete a counseling or rehabilitation program,
21 among other things.

22 SECOND CAUSE FOR DISCIPLINE

23 **(Use of Dangerous Drugs and Alcoholic Beverages on April 10, 2011)**

24 20. Respondent is subject to disciplinary action under Code section 4301(h) for
25 unprofessional conduct in that on or about April 10, 2011, Respondent used, or administered to
26 herself, a controlled substance, cocaine, and alcoholic beverages to the extent or in a manner
27 dangerous to herself or the public in that Respondent swerved through traffic and drove
28 southbound on the northbound lanes of Rimpau requiring detectives of the Corona Police

1 Department to quickly change lanes in order to avoid a head-on collision with Respondent, as
2 more fully set forth in paragraphs 16-19, incorporated herein as though set forth in full.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Violation of Statutes Regarding Controlled Substances and Dangerous Drugs)**

5 21. Respondent is subject to disciplinary action under Code section 4301(j), in
6 conjunction with Health and Safety Code section 11350(a), for unprofessional conduct in that on
7 or about April 10, 2011, Respondent violated the laws of the state of California regarding
8 controlled substances and dangerous drugs when Respondent unlawfully had cocaine in her
9 possession, as more fully set forth in paragraphs 16-19, incorporated herein as though set forth in
10 full.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Conviction of More Than One Misdemeanor Involving Alcoholic Beverages)**

13 22. Respondent is subject to disciplinary action under Code section 4301(k) in that
14 Respondent sustained more than one misdemeanor conviction for the use or consumption of
15 alcoholic beverages in that on or about January 5, 2007, in a criminal proceeding entitled *The*
16 *People of the State of California v. Jillian Frances McMahon*, Nevada City Municipal Court,
17 Case No. M070043, Respondent was convicted of violating Vehicle Code section 23152(a),
18 driving under the influence of alcohol, a misdemeanor, and on September 30, 2011, Respondent
19 was convicted in *The People of the State of California v. Jillian Frances McMahon*, Riverside
20 Superior Court Case No. RIF1102567, of violating Vehicle Code section 23152(a), driving under
21 the influence of alcohol, a misdemeanor.

22 **DISCIPLINE CONSIDERATIONS**

23 23. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges that on or about January 5, 2007, in a prior criminal proceeding entitled
25 *People of the State of California v. Jillian Frances McMahon*, Nevada City Municipal Court,
26 Case No. M070043, Respondent was convicted of violating Vehicle Code section 23152(a),
27 driving under the influence of alcohol, a misdemeanor, and was sentenced to summary probation
28 for 3 years.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

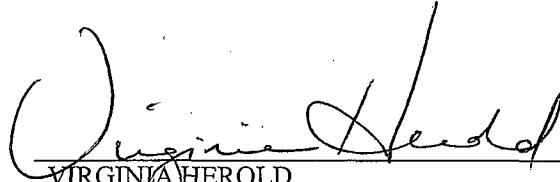
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number 97033, issued to Jillian Frances McMahon;
2. Ordering Jillian Frances McMahon 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: _____

7/12/12



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

SD2012801884
80620432.doc