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

11 In the Matter of the Accusation Against:
12 **LISA A. SHEEHAN**
33 Glenwood Drive
13 Napa, CA 94559
14 **Pharmacy Technician Registration No.**
15 **31225**
16 Respondent.

Case No. 4298

A C C U S A T I O N

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 October 20, 1999, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number 31225 to Lisa A. Sheehan (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought in this
24 Accusation and will expire on November 30, 2012, unless renewed.

25 JURISDICTION

- 26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
 2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
 3 Act [Health & Safety Code, § 11000 et seq.].

4 5. Section 4300, subdivision (a), of the Code provides that every license issued by the
 5 Board may be suspended or revoked.

6 6. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is
 7 not renewed within three years following its expiration may not be renewed, restored, or
 8 reinstated and shall be canceled by operation of law at the end of the three-year period. Section
 9 4402, subdivision (e), of the Code provides that any other license issued by the Board may be
 10 canceled by the Board if not renewed within 60 days after its expiration, and any license canceled
 11 in this fashion may not be reissued but will instead require a new application to seek reissuance.

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

16 STATUTORY AND REGULATORY PROVISIONS

17 8. Section 4301 of the Code states:

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

21 ...

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

1 practice authorized by the license.

2 . . .

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

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

24 10. Section 493 of the Code states:

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

1 qualifications, functions, and duties of the licensee in question, the record of conviction of the
2 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
3 and the board may inquire into the circumstances surrounding the commission of the crime in
4 order to fix the degree of discipline or to determine if the conviction is substantially related to the
5 qualifications, functions, and duties of the licensee in question.”

6 11. Code section 4060 states:

7 “No person shall possess any controlled substance, except that furnished to a person upon
8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
10 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
11 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
12 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
13 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
14 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
15 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
16 with the name and address of the supplier or producer.”

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

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

24 CONTROLLED SUBSTANCES/DANGEROUS DRUGS

25 13. Code section 4021 states:.

26 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
27 11053) of Division 10 of the Health and Safety Code.”

28

1 14. Code section 4022 provides:

2 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

4 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
5 prescription,’ ‘Rx only’ or words of similar import.

6 “(b) Any device that bears the statement: ‘Caution: federal law restricts this device to sale
7 by or on the order of a _____,’ ‘Rx only,’ or words of similar import . . .

8 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
9 prescription or furnished pursuant to Section 4006.”

10 15. Cocaine is a Schedule II controlled substance and narcotic as designated by Health
11 and Safety Code section 11055, subdivision (b)(6), and a dangerous drug under Code section
12 4022.

13 COST RECOVERY

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

18 FACTS

19 17. On or about January 18, 2011, at approximately 1:39 a.m., two officers from the
20 Pleasant Hill Police Department (PHPD) responded to a report that a woman had backed her car
21 into some garbage cans. The caller suspected that the woman driver was intoxicated. Officer 1
22 arrived at the scene first and observed Respondent sitting behind the wheel of her vehicle.
23 Respondent stated that she was trying to make a U-turn and she backed into the garbage cans.
24 Officer 2 arrived at the scene and also observed Respondent sitting in the driver’s seat of her
25 vehicle, which was blocking half of the roadway. Officer 2 observed that Respondent’s eyes
26 were red and watery and she was slow in communicating and responding to questions and
27 commands. When respondent exited her vehicle, she had to place her hand against her vehicle to
28 steady herself. Respondent’s speech was slurred and Officer 2 could smell alcohol on her breath.

1 Respondent spontaneously told the officers that she was drunk. She stated that she drank three to
2 four glasses of wine at a nearby bowling alley, and she was unable to explain what she was doing
3 in the neighborhood where the officers found her.

4 18. As Officer 2 began to explain the first field sobriety test (FST) to Respondent she
5 began to cry and refused to complete any FST, stating that she knew she was drunk and that she
6 should not be driving. Based upon Respondent's objective signs of intoxication, the fact that the
7 officers found her in the driver's seat of her vehicle blocking the roadway, and her admission that
8 she had been drinking and driving, Officer 2 arrested Respondent for violating Vehicle Code
9 section 23152, subdivision (a) (driving under the influence). Respondent was transported to the
10 PHPD for booking and a blood draw was performed. The results of the blood draw showed that
11 Respondent had a blood alcohol content of .27%.

12 19. During Respondent's booking search, Officer 1 located a white powdery substance
13 wrapped in a piece of plastic in the rear pocket of Respondent's pants. Respondent denied that
14 the plastic belonged to her, but she confirmed that the tissue and the pants she was wearing were
15 hers. Officer 2 tested the substance for Cocaine salt and Cocaine base using a NIK narcotics test
16 kit. The test showed a positive presumptive result for Cocaine salt. The suspected Cocaine was
17 sent to the Contra Costa County Crime Lab for positive identification. The crime lab identified
18 the substance as .11 grams of Cocaine salt.

19 20. On or about January 5, 2012, in a criminal matter entitled *The People of the State of*
20 *California v. Lisa Ann Sheehan*, Contra Costa County Case No. 1-153606-9, Respondent was
21 convicted by plea of no contest of violating Vehicle Code section 23152, subdivision (b) (driving
22 under the influence with a blood alcohol content of .08% or higher), with a special allegation of
23 violating Vehicle Code section 23578 (having a blood alcohol content of .15% or higher).
24 Respondent was placed on probation for three years and ordered to serve thirty days in an
25 alternative work program, pay a fine, complete a nine month alcohol program, and not drive with
26 any measureable amount of alcohol in her blood.

27
28

1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)
3 (Bus. & Prof Code § 4301, subd. (h))

4 21. Respondent has subjected her pharmacy technician registration to discipline under
5 Code section 4301, subdivision (h), in that she used alcoholic beverages to the extent or in a
6 manner as to be dangerous or injurious to herself and to the public. The circumstances are set
7 forth above in paragraphs 17 through 20.

8 SECOND CAUSE FOR DISCIPLINE

9 (Unprofessional Conduct – Possession of Controlled Substance)
10 (Bus. & Prof. Code § 4060)

11 22. Respondent has subjected her pharmacy technician registration to discipline under
12 Code section 4060 in that she possessed a controlled substance without a prescription. The
13 circumstances are set forth above in paragraphs 17 though 19.

14 THIRD CAUSE FOR DISCIPLINE

15 (Unprofessional Conduct – Conviction of a Substantially Related Crime)
16 (Bus. & Prof. Code § 4301, subd. (l))

17 23. Respondent has subjected her pharmacy technician registration to discipline under
18 Code section 4301, subdivision (l), as defined by California Code of Regulations, title 16, section
19 1770, in that she was convicted of a crime substantially related to the qualifications, functions,
20 and duties of a licensee. The circumstances are set forth above in paragraphs 17 through 20.

21 FOURTH CAUSE FOR DISCIPLINE

22 (Conviction)
23 (Bus. & Prof. Code § 490)

24 24. Respondent has subjected her pharmacy technician registration to discipline under
25 Code section 490 in that she was convicted of a crime substantially related to the qualifications,
26 functions, and duties of the business or profession for which she was issued a license. The
27 circumstances are set forth above in paragraphs 17 through 20.
28

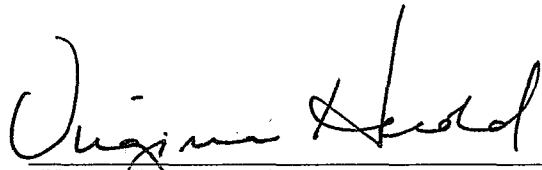
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PRAYER

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 Registration Number 31225, issued to Lisa A. Sheehan;
2. Ordering Lisa A. Sheehan 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/19/12



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

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