

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:	Case No. 4366
11 TAMMY M. SMITH	A C C U S A T I O N
12 1320 Cashew Road	
13 Santa Rosa, CA 95403	
14 Pharmacy Technician License No. TCH 12242	
15 Respondent.	

16
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 March 18, 1994, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 12242 to Tammy M. Smith (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on March 31, 2014, 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 (Code) unless otherwise indicated.

1 9. California Code of Regulations, title 16, 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 Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by her license or registration in a
7 manner consistent with the public health, safety, or welfare.”

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11 FIRST CAUSE FOR DISCIPLINE

12 (Conviction of Substantially Related Crime(s))

13 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
14 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
15 substantially related crime(s), in that on or about August 29, 2011, in the criminal case *People v.*
16 *Tammy Mae Smith*, Case No. SCR-604740 in Sonoma County Superior Court, Respondent was
17 convicted of violating (1) Vehicle Code section 23152(a) (Driving under the influence of alcohol
18 or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23538(b)(2)
19 for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b) (Driving with
20 blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to
21 Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more, as follows:

22 a. On or about June 28, 2011, the California Highway Patrol received a citizen’s
23 report of a vehicle driving erratically and with a driver believed to be under the influence. The
24 officer(s) responded and discovered Respondent driving erratically. After stopping the vehicle,
25 the officer(s) detected the odor of alcohol, Respondent’s eyes were red and watery, and she had
26 slurred speech and an unsteady gait. When asked if she had been drinking, Respondent answered
27 “two shots.” Respondent was unable to successfully perform Field Sobriety Tests (FSTs), and
28 she was placed under arrest. Breath tests registered blood alcohol levels of 0.21% and 0.23%.

1 b. On or about July 11, 2011, Respondent was charged by Complaint in Case No.
2 SCR-604740 with violating (1) Vehicle Code section 23152(a) (Driving under the influence of
3 alcohol or drugs), a misdemeanor, with a special allegation pursuant to Vehicle Code section
4 23538(b)(2) for a blood alcohol level of 0.20% or more, and (2) Vehicle Code section 23152(b)
5 (Driving with blood alcohol level of 0.08% or more), a misdemeanor, with a special allegation
6 pursuant to Vehicle Code section 23538(b)(2) for a blood alcohol level of 0.20% or more;

7 c. On or about August 29, 2011, Respondent pleaded nolo contendere and was
8 convicted of both counts and both special allegations. Imposition of sentence was suspended in
9 favor of a conditional sentence of thirty-six (36) months, on terms and conditions including four
10 (4) days in jail (1 day CTS), sixty (60) days with an alcohol-detecting (SCRAM) ankle bracelet, a
11 First Offender Drinking Driver Program, an alcohol prohibition, and fines and fees..

12 SECOND CAUSE FOR DISCIPLINE

13 (Dangerous or Injurious Use of Alcohol)

14 12. Respondent is subject to discipline under section 4301(h) of the Code, in that, as
15 described in paragraph 11 above, Respondent made dangerous or injurious use of alcohol.

16 THIRD CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct)

18 13. Respondent is subject to discipline under section 4301 of the Code in that, as
19 described in paragraphs 11 and 12 above, Respondent engaged in unprofessional conduct.

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21 DISCIPLINE CONSIDERATIONS

22 14. To determine the appropriate level of discipline, if any, to be imposed on Respondent,
23 Complainant further alleges that on or about July 19, 2008, Respondent was in a car being driven
24 by her sister, who was under the influence of alcohol, and when the car was stopped by police and
25 her sister was placed under arrest, Respondent showed signs of significant intoxication, including
26 belligerence toward police. Respondent was arrested and subsequently charged with violating
27 Penal Code section 647(f) (Public Intoxication - Unable to Care for Self). After she completed
28 and submitted proof of completion of thirty (30) AA meetings, the case was dismissed.

