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

12 In the Matter of the Accusation Against:

Case No. 4512

13 **NEIL DANIEL MCELROY**  
2818 Uranus Avenue  
Eau Claire, WI 54703

**A C C U S A T I O N**

14 **Pharmacist License No. RPH 37078**

15 Respondent.

16  
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 December 11, 1981, the Board of Pharmacy issued Pharmacist License  
23 No. RPH 37078 to Neil Daniel McElroy (Respondent). The Pharmacist License was in full force  
24 and effect at all times relevant to the charges brought herein and will expire on October 31, 2013,  
25 unless renewed.

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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, in pertinent part::

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 default  
8 has been entered or whose case has been heard by the board and found guilty, by any of the  
9 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 year.

13 (4) Revoking his or her license.

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

16 ..."

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

22 5. Section 4300.1 of the Code states that "the expiration, cancellation, forfeiture, or  
23 suspension of a aboard-issued license by operation of law, or by order or decision of the board or  
24 a court of law, the placement of a license on a retired status, or the voluntary surrender of a  
25 license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
26 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
27 suspending or revoking the license."

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1 the use impairs Respondent's ability to conduct with safety to the public the practice authorized  
2 by his license.

3 10. The circumstances were that on or about September 5, 2009, in Eau Claire, Wisconsin,  
4 Respondent was stopped by Eau Claire police while Respondent was driving his car. At that time,  
5 Respondent had a 12-pack of beer inside his vehicle, exhibited slurred speech and failed all of the  
6 field sobriety tests given to him by police. The results of a preliminary breath test administered to  
7 Respondent in the field was .278%. At that time, Respondent was arrested for driving under the  
8 influence of alcohol, taken to Luther Hospital for a blood test, and refused to consent to a blood  
9 test. At the Eau Claire Police Station, Respondent was uncooperative, disruptive and was placed  
10 in a holding cell.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct)

13 11. Respondent is subject to disciplinary action under Code section 4301 because he  
14 engaged in unprofessional conduct as alleged in Paragraph 10 above.

15 PRAYER

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

18 1. Revoking or suspending Pharmacist License Number RPH 37078, issued to Neil  
19 Daniel McElroy;

20 2. Ordering Neil Daniel McElroy to pay the Board of Pharmacy the reasonable costs of  
21 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
22 125.3; and

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

24 DATED: \_\_\_\_\_

9/6/13



25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant