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

11
12 In the Matter of the Accusation Against:

13 **MICHELLE LINN AYER**
14 **6513 Reflection Drive, 109**
San Diego, CA 92124

15 **Pharmacy Technician Registration No. TCH**
16 **80235**

17 Respondent.

Case No. 4656

A C C U S A T I O N

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about December 14, 2007, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 80235 to Michelle Linn Ayer (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on March 31, 2015, 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, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render a decision suspending or revoking the license.

13 **STATUTORY PROVISIONS**

14 6. Section 482 of the Code states:

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

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

18 (b) Considering suspension or revocation of a license under Section 490.

19 Each board shall take into account all competent evidence of rehabilitation
20 furnished by the applicant or licensee.

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

25 8. Section 493 of the Code states:

26 Notwithstanding any other provision of law, in a proceeding conducted by a
27 board within the department pursuant to law to deny an application for a license or
28 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

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

8 As used in this section, "license" includes "certificate," "permit,"
9 "authority," and "registration."

10 9. Section 4301 of the Code states:

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

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

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22 (i) The conviction of a crime substantially related to the qualifications,
23 functions, and duties of a licensee under this chapter. The record of conviction of
24 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
25 States Code regulating controlled substances or of a violation of the statutes of this
26 state regulating controlled substances or dangerous drugs shall be conclusive
27 evidence of unprofessional conduct. In all other cases, the record of conviction
28 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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REGULATORY PROVISIONS

10. 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.

11. 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.

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COST RECOVERY

12. Section 125.3 of the Code provides, 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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FIRST CAUSE FOR DISCIPLINE

(August 16, 2012 Criminal Conviction for DUI on July 15, 2012)

13. Respondent has subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about August 16, 2012, in a criminal proceeding entitled *People of the State of*
2 *California v. Michelle Linn Ayer*, Sacramento Superior Court, case number 12T04117,
3 Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152(b),
4 driving with a blood alcohol content of .08 percent or more, a misdemeanor. Respondent also
5 admitted and the Court found true an enhancement under Vehicle Code section 23578, for having
6 a blood content of .15 percent or more.

7 b. The circumstances surrounding the conviction are that on or about July 15, 2012 at
8 approximately 1:40 a.m. an officer from the Sacramento County Sheriff's Office observed
9 Respondent driving her car on La Riviera Drive eastbound, east of Salmon Falls Drive. The
10 officer observed Respondent driving in the bicycle lane and on the two right turn lane dividers.
11 Respondent stopped her car twice for no apparent reason. Following these observations, the
12 officer initiated a traffic stop. During the stop, the officer observed signs and symptoms of
13 alcohol intoxication, he detained Respondent and thereafter turned the DUI investigation over to
14 the California Highway Patrol.

15 c. Upon arriving on the scene, the California Highway Patrol (CHP) officer conducted a
16 Field Sobriety Test on Respondent. The CHP officer smelled alcohol emitting from
17 Respondent's breath and he observed that Respondent's eyes were red and watery, and that she
18 was unsteady and off balance as she walked. When asked if she had anything to drink,
19 Respondent admitted to the CHP officer that she had one bottle of Sapporo. The officer
20 administered Field Sobriety Tests, which Respondent failed. The officer then placed Respondent
21 under arrest for driving under the influence. Respondent's blood alcohol content was .24 percent.

22 d. As a result of the conviction Respondent was ordered to serve 36 months summary
23 probation, required to serve 2 days in custody with credit for time served, ordered to pay all fines,
24 fees and restitution, required to enroll and complete the First Offender DUI program.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Use of Alcoholic Beverages in a Manner Dangerous & Injurious to Oneself & the Public)**

27 14. Respondent has subjected her license to disciplinary action under section 4301,
28 subdivision (h) of the Code in that on or about July 15, 2012, Respondent drove a vehicle while

1 under the influence of an alcoholic beverage, which posed a serious risk of injury and/or death to
2 herself and to the public, as detailed in paragraph 13, above, and which are incorporated herein by
3 reference.

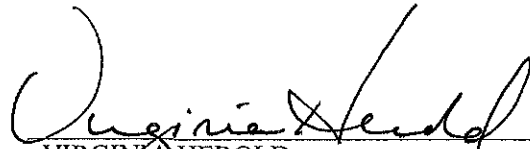
4 **PRAYER**

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

- 7 1. Revoking or suspending Pharmacy Technician Registration Number TCH 80235,
8 issued to Michelle Linn Ayer;
- 9 2. Ordering Michelle Linn Ayer to pay the Board of Pharmacy the reasonable costs of
10 the investigation and enforcement of this case, pursuant to Business and Professions Code section
11 125.3;
- 12 3. Taking such other and further action as deemed necessary and proper.

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15 DATED: _____

9/6/13



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

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