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

11 In the Matter of the Accusation Against:

Case No. 4803

12 **AUSTIN MICHAEL HITZEMAN**
13 **420 Tahoe Avenue**
14 **Placentia, CA 92870**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 97986**

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 January 7, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 97986 to Austin Michael Hitzeman (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on December 31, 2013, 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

16 ...

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

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

20 7. 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 8. Section 493 of the Code states:

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

1 duties of the licensee in question, the record of conviction of the crime shall be
2 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
4 the crime in order to fix the degree of discipline or to determine if the conviction is
5 substantially related to the qualifications, functions, and duties of the licensee in
6 question.

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

9 9. Section 4301 of the Code states:

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

14

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

20

21 (k) The conviction of more than one misdemeanor or any felony involving the
22 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
23 or any combination of those substances.

24 . . .

25 (l) The conviction of a crime substantially related to the qualifications,
26 functions, and duties of a licensee under this chapter. The record of conviction of
27 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
28 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 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

1 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
2 the verdict of guilty, or dismissing the accusation, information, or indictment.

3 **REGULATORY PROVISIONS**

4 10. California Code of Regulations, title 16, (CCR) section 1769, states:

5
6 (b) When considering the suspension or revocation of a facility or a
7 personal license on the ground that the licensee or the registrant has been
8 convicted of a crime, the board, in evaluating the rehabilitation of such person and
9 his present eligibility for a license will consider the following criteria:

- 10 (1) Nature and severity of the act(s) or offense(s).
11 (2) Total criminal record.
12 (3) The time that has elapsed since commission of the act(s) or offense(s).
13 (4) Whether the licensee has complied with all terms of parole, probation,
14 restitution or any other sanctions lawfully imposed against the licensee.
15 (5) Evidence, if any, of rehabilitation submitted by the licensee.

16 11. CCR section 1770, states:

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

24 **COST RECOVERY**

25 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
26 the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case. If the case settles the Board may seek reimbursement of their costs
of investigation and prosecution of this case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (May 5, 2011 Criminal Conviction for DUI on July 27, 2010)

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

6 a. On or about May 5, 2011, in a criminal proceeding entitled *People of the State*
7 *of California v. Austin Michael Hitzman*, Orange County Superior Court, case number
8 10NM10621, Respondent was convicted on his plea of guilty to violating Vehicle Code sections
9 23152(a) driving under the influence of alcohol, and 23152(b) driving with a blood alcohol
10 content of .08 percent or above, a misdemeanor, *to wit*: .09 percent.

11 b. The facts and circumstances surrounding the conviction are that on July 27,
12 2010, at 0313 hours, Respondent was driving his vehicle in a residential area in Placentia,
13 California. A police officer observed that Respondent's car was traveling at about 35 miles per
14 hour in an area where the speed limit was 25 miles per hour. The officer followed Respondent.
15 The officer noticed that the left tail lamp on the car was not functioning. The officer conducted a
16 traffic stop and Respondent was the driver of the car. He had two passengers with him and they
17 were all under 21 years of age. While speaking to Respondent the officer smelled a slight odor of
18 alcohol. Initially, Respondent stated he had not drank any alcohol, and then later admitted to
19 drinking two glasses of wine at dinner. The officer administered field sobriety tests which
20 Respondent was unable to complete as demonstrated. A breath test administered at the scene read
21 .103 percent at 0320 hours. Respondent was arrested and placed in the police car. He began to
22 bang the back of his head on the hard plastic seat. He complained that the handcuffs were too
23 tight. The officer adjusted the handcuffs to make them more comfortable for Respondent.
24 Shortly thereafter Respondent again began banging his head on the back of the seat. He
25 eventually calmed down and was taken to the Placentia Police Department for booking and a
26 blood test. At the police station, Respondent became uncooperative and did not want to have his
27 blood tested. He stated he wanted a less accurate chemical test. It appeared to officers that
28 Respondent was intentionally delaying the test. Respondent eventually provided a blood sample.

1 During the booking process, Respondent told the officer that he was employed as a Pharmacy
2 Technician at St. Jude's Hospital and that, "I hope you never come to the St. Jude Pharmacy. You
3 know, accidents happen." The officer took this as a threat.

4 c. Respondent was sentenced to three years of informal probation, ordered to submit to a
5 chemical test of blood, breath, or urine as directed by any peace officer, attend and complete a
6 three month level one First Offender Program, attend and complete a Mother's Against Drunk
7 Driving Victim's Impact Panel, submit to license restriction for one year, and other fees,
8 penalties and conditions of probation.

9 d. On March 20, 2013, Respondent was charged with a probation violation based
10 upon his arrest on March 12, 2013, for driving while in possession of 1 ounce of marijuana,
11 driving without a license and driving with a cracked windshield.

12 e. On July 9, 2013, at a probation revocation hearing, Respondent's probation
13 was reinstated on all of the same terms and conditions.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Used Alcohol/Drugs in a Manner Dangerous to Self or Others)**

16 14. Respondent has subjected his license to disciplinary action under section 4301,
17 subdivision (h) of the Code in that on or about July 27, 2010, Respondent used alcohol/drugs in a
18 manner as to be dangerous or injurious to himself or the public by driving a vehicle while under
19 the influence of an alcoholic beverage and or a dangerous drug, which posed a serious risk of
20 injury and/or death to himself and to the public, as detailed in paragraph 13, above, and which is
21 incorporated herein by reference.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Driving Under the Influence on December 17, 2012)**

24 15. Respondent has subjected his license to discipline under section 4301, subdivision (h)
25 of the Code in that he was driving a vehicle while under the influence of alcoholic beverages and
26 or drugs, which posed a serious risk of injury and/or death to himself and to the public. The
27 circumstances are as follows:

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1 a. On or about December 17, 2012, at approximately 8:45 p.m., two California
2 Highway Patrol Officers were riding in a marked police car driving westbound on Interstate 210
3 near the Rosemead Blvd. off-ramp. The officers observed a black Ford Mustang stopped on the
4 left shoulder of the off-ramp. The officers initiated a traffic stop. As the officers approached the
5 mustang they noticed the engine was running, and Respondent was sitting behind the wheel of the
6 car with his eyes closed and his head resting against the driver's side head rest. One of the
7 officers knocked several times on the driver's side window and called out to Respondent to open
8 the door of his vehicle. When Respondent finally opened his eyes and saw the police officer
9 staring at him through the car window, he looked dazed, and then Respondent quickly attempted
10 to put his car in gear. At this point, the second police officer knocked on the passenger side
11 window and told Respondent to roll down the window. Respondent rolled down the passenger
12 side window and the first officer opened the driver's side car door and told Respondent to get out
13 of the car. As soon as the door opened, the Officer could smell a moderate odor of an alcoholic
14 beverage and a strong odor of burnt and fresh marijuana emitting from within the vehicle. As
15 Respondent exited the vehicle his movements were slow and lethargic. Respondent appeared
16 confused and unaware of his surroundings. As Respondent was exiting the vehicle he appeared
17 off balance as he braced himself against the vehicle. The officer instructed Respondent to move
18 to the back of the vehicle and as Respondent walked he had an unsteady gait. The officers also
19 continued to notice the smell of marijuana and alcohol emitting from Respondent's person.
20 Respondent's eyes were watery, his pupils were dilated and his speech was slow.

21 b. Respondent was placed in the backseat of the police car and taken to a safe
22 place to complete field sobriety tests. One of the officers drove Respondent's car to a nearby
23 parking lot. The second officer followed the mustang in the patrol car. In the parking lot,
24 Respondent was removed from the patrol car and assisted to the sidewalk. When asked if he had
25 used any drugs, Respondent answered he had "smoked a bowl around five-thirty or six," and he
26 showed the officers his medical marijuana card. Respondent also told the officers that he had
27 consumed wine earlier in the night.

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1 c. The officers then explained and demonstrated a series of field sobriety tests,
2 which Respondent was unable to complete satisfactorily. A later check through CHP dispatch
3 showed that Respondent had a prior DUI conviction and was currently on DUI probation
4 requiring him to submit to any breath test requested by law enforcement. Respondent refused to
5 submit to the Preliminary Alcohol Screening test even though he was on court probation for a
6 prior DUI.

7 d. A search of Respondent's car revealed multiple containers of a green leafy
8 substance resembling marijuana, two small containers containing a brown thick substance
9 resembling controlled marijuana (hash oil). The thick brown substance tested positive for hash
10 oil. Respondent was transported to the Altadena CHP Office for a drug recognition evaluation
11 (DRE) conducted by one of the officers. After the DRE evaluation, Respondent was transported
12 to Verdugo Hills Hospital where his blood was drawn at approximately 12:25 a.m., nearly three
13 hours and forty-five minutes after Respondent was first contacted by the CHP officers.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Used Alcohol/Drugs in a Manner Dangerous to Self or Others)**

16 16. Respondent has subjected his license to disciplinary action under section 4301,
17 subdivision (h) of the Code in that on or about December 17, 2012, Respondent used
18 alcohol/drugs in a manner as to be dangerous or injurious to himself or the public by driving a
19 vehicle while under the influence of an alcoholic beverage and or a dangerous drug, which posed
20 a serious risk of injury and/or death to himself and to the public, as detailed in paragraph 15,
21 above, and which is incorporated herein by reference.

22 **FIFTH CAUSE FOR DISCIPLINE**

23 **(July 9, 2013 Criminal Conviction for Possession of Marijuana, and
24 Driving without a License, on March 12, 2013)**

25 17. Respondent has subjected his license to discipline under sections 490 and 4301,
26 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
27 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

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1 a. On or about July 9, 2013, in a criminal proceeding entitled *People of the State*
2 *of California v. Austin Michael Hitzman*, Orange County Superior Court, case number PL317708,
3 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23222(b),
4 possession of one ounce of marijuana, and Vehicle Code section 12500(a), driving without a valid
5 driver's license.

6 b. Respondent was sentenced to pay a \$50 fine on the driving without a valid
7 license conviction, plus additional fees and penalties. Sentencing on the possession of marijuana
8 charge was suspended.

9 **SIXTH CAUSE FOR DISCIPLINE**

10 **(January 6, 2014 Conviction for Driving Under the Influence on November 23, 2013)**

11 18. Respondent has subjected his license to discipline under sections 490 and 4301,
12 subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the
13 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

14 a. On or about January 6, 2014, in a criminal proceeding entitled *People of the*
15 *State of California v. Austin Michael Hitzman*, Orange County Superior Court, North Justice
16 Center Case No. 13NM13857, Respondent was convicted on his plea of guilty to violating
17 Vehicle Code Section 23152 (a) driving under the influence of alcohol and or drugs, and Section
18 23152 (b) driving with a blood alcohol level above .08 percent.

19 b. The facts and circumstances surrounding the convictions are that on or about
20 November 23, 2013, at 2045 hours, an officer from the Placentia Police Department was working
21 patrol when he observed Respondent enter an intersection on a solid red light. The officer
22 initiated a traffic stop. When the officer asked Respondent to step out of the car he could smell
23 the strong odor of an alcoholic beverage. Respondent told the officer that he had had "too much
24 to drink, - three regular sized margaritas." The officer observed that Respondent had bloodshot,
25 watery eyes and was slurring his speech. Field sobriety tests were administered to Respondent
26 which he failed. Respondent was given a breath test at the scene that revealed a blood alcohol
27 level of .109 percent at 2119 hours. Respondent was arrested and taken to the police station for
28 booking and then was released.

1 c. On January 6, 2014, Respondent pleaded guilty to driving under the influence
2 and driving with a blood alcohol level above .08 percent. He was sentenced to five (5) years
3 probation on several terms and conditions of probation including the payment of fines and fees,
4 serve seventy-five (75) days in custody, attend and complete an eighteen (18) month Multiple
5 Offender Alcohol Program, and attend and complete a Mother's Against Drunk Driving
6 (MADD) Panel.

7 **SEVENTH CAUSE FOR DISCIPLINE**

8 **(Used Alcohol/Drugs in a Manner Dangerous to Self or Others)**

9 19. Respondent has subjected his license to disciplinary action under section 4301,
10 subdivision (h) of the Code in that on or about November 23, 2013, Respondent used
11 alcohol/drugs in a manner as to be dangerous or injurious to himself or the public by driving a
12 vehicle while under the influence of an alcoholic beverage and or a dangerous drug, which posed
13 a serious risk of injury and/or death to himself and to the public, as detailed in paragraph 18,
14 above, and which is incorporated herein by reference.

15 **EIGHTH CAUSE FOR DISCIPLINE**

16 **(Multiple Convictions Involving the Use of Alcohol or Controlled Substances)**

17 20. Respondent has subjected his license to disciplinary action under section 4301,
18 subdivision (k) of the Code in that on or about May 5, 2011, July 9, 2013, and January 6, 2014,
19 Respondent sustained three convictions involving the use, consumption, or self-administration of
20 any dangerous drug or alcoholic beverage, or any combination of those substances, as detailed in
21 paragraphs 13, 17, and 18, above, and which are incorporated herein by reference.

22 **PRAYER**

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

25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 97986,
26 issued to Austin Michael Hitzeman;

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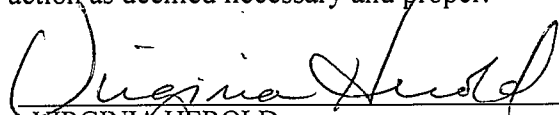
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2. Ordering Austin Michael Hitzeman to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 3/27/14



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