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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:

Case No. 4949

12 **JOHN J. GOONAN**

13 **2138 N. Shady Ct.**
14 **Visalia, CA 93291**

15 **Pharmacy Technician Registration No.**
16 **69280**

A C C U S A T I O N

17 Respondent.

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 July 8, 2006, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number 69280 to John J. Goonan (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on June 30, 2014, 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. Code section 4300 states:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the
8 board, whose default has been entered or whose case has been heard by the board and
found guilty, by any of the following methods:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not exceeding one
12 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 discretion may deem proper.

15 (c) The board may refuse a license to any applicant guilty of
16 unprofessional conduct. The board may, in its sole discretion, issue a probationary
17 license to any applicant for a license who is guilty of unprofessional conduct and who
18 has met all other requirements for licensure. The board may issue the license subject
to any terms or conditions not contrary to public policy, including, but not limited to,
the following:

19 (1) Medical or psychiatric evaluation.

20 (2) Continuing medical or psychiatric treatment.

21 (3) Restriction of type or circumstances of practice.

22 (4) Continuing participation in a board-approved rehabilitation program.

23 (5) Abstention from the use of alcohol or drugs.

24 (6) Random fluid testing for alcohol or drugs.

25 (7) Compliance with laws and regulations governing the practice of
pharmacy.

26 (d) The board may initiate disciplinary proceedings to revoke or suspend
27 any probationary certificate of licensure for any violation of the terms and conditions
of probation. Upon satisfactory completion of probation, the board shall convert the
28 probationary certificate to a regular certificate, free of conditions.

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

6 5. Code section 4300.1 states:

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

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

17 STATUTORY PROVISIONS

18 7. Section 490 of the Code states:

19 a) In addition to any other action that a board is permitted to take against a
20 licensee, a board may suspend or revoke a license on the ground that the licensee has
21 been convicted of a crime, if the crime is substantially related to the qualifications,
22 functions, or duties of the business or profession for which the license was issued.

23 (b) Notwithstanding any other provision of law, a board may exercise any
24 authority to discipline a licensee for conviction of a crime that is independent of the
25 authority granted under subdivision (a) only if the crime is substantially related to the
26 qualifications, functions, or duties of the business or profession for which the
27 licensee's license was issued.

28 (c) A conviction within the meaning of this section means a plea or
verdict of guilty or a conviction following a plea of nolo contendere. An action that a
board is permitted to take following the establishment of a conviction may be taken
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.

(d) The Legislature hereby finds and declares that the application of this
section has been made unclear by the holding in *Petropoulos v. Department of Real
Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a
significant number of statutes and regulations in question, resulting in potential harm
to the consumers of California from licensees who have been convicted of crimes.
Therefore, the Legislature finds and declares that this section establishes an
independent basis for a board to impose discipline upon a licensee, and that the
amendments to this section made by Chapter 33 of the Statutes of 2008 do not
constitute a change to, but rather are declaratory of, existing law.

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1 8. Section 4301 of the Code states:

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

6 ...

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

12 ...

13 (j) The violation of any of the statutes of this state, or any other state, or
14 of the United States regulating controlled substances and dangerous drugs.

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

18 (l) The conviction of a crime substantially related to the qualifications,
19 functions, and duties of a licensee under this chapter. The record of conviction of a
20 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
21 States Code regulating controlled substances or of a violation of the statutes of this
22 state regulating controlled substances or dangerous drugs shall be conclusive evidence
23 of unprofessional conduct. In all other cases, the record of conviction shall be
24 conclusive evidence only of the fact that the conviction occurred. The board may
25 inquire into the circumstances surrounding the commission of the crime, in order to
26 fix the degree of discipline or, in the case of a conviction not involving controlled
27 substances or dangerous drugs, to determine if the conviction is of an offense
28 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.

REGULATORY PROVISIONS

24 9. California Code of Regulations, Title 16, section 1770 States:

25 For the purpose of denial, suspension, or revocation of a personal or
26 facility license pursuant to Division 1.5 (commencing with Section 475) of the
27 Business and Professions Code, a crime or act shall be considered substantially
28 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.

1 **COST RECOVERY**

2 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
6 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
7 included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Criminal Conviction)**

10 11. Respondent is subject to disciplinary action for unprofessional conduct under section
11 4301(l) in that Respondent has been convicted of the following crimes:

12 12. On or about July 30, 2008, Respondent was convicted on his plea of nolo contendere
13 to violating Penal Code section 23152(a), driving under the influence of alcohol, a misdemeanor,
14 and the enhancement of driving with a blood alcohol level above .15%. Respondent was placed
15 on probation for three years and ordered to complete the first offender DUI program.

16 a. On or about April 13, 2008, at approximately 11 p.m., Officer Williams of the
17 Fresno Police Department was on patrol and observed Respondent's Chevy Pickup turn onto a
18 street as his truck broke traction. He further observed the vehicle abruptly change lanes and fail
19 to use a turn signal. Officer Williams stopped Respondent and made contact at which time he
20 observed objective signs of intoxication. Officer Williams also observed an open bottle of
21 Smirnoff Vodka in plain view on the rear floorboard of Respondent's car. Respondent performed
22 poorly on the field sobriety tests and was arrested for driving under the influence. Respondent's
23 blood alcohol level was .19%.

24 13. On or about July 30, 2013, Respondent was convicted on his plea of no contest to
25 violating Penal Code section 23152(a), driving under the influence of alcohol, a misdemeanor,
26 and the enhancement of having a prior DUI conviction. Respondent was placed on three years
27 probation and ordered to complete the 18 month multiple offender DUI program. He was also
28 ordered to install an Ignition Interlock Device in his car

1 a. On or about June 19, 2013, at approximately 1:50 a.m., Officer Freeman of the
2 California Highway Patrol was on patrol in Visalia, Ca when he observed Respondent's GMC
3 Sierra Pickup did not have a front license plate. Officer Freeman initiated a traffic stop and
4 contacted the Respondent who displayed objective signs of intoxication. Respondent performed
5 poorly on the field sobriety tests and was arrested for driving under the influence. Respondent's
6 blood alcohol level was .09%.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Convictions Involving Alcohol)**

9 14. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4301(k) in that Respondent has been convicted of more than one misdemeanor involving the use,
11 consumption, or self administration of an alcoholic beverage, as further set forth in paragraphs 8-
12 9, above.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Use Controlled Substances/Alcohol in a Dangerous Manner)**

15 15. Respondent is subject to disciplinary action for unprofessional conduct under section
16 4301(h) in that Respondent used alcohol in a dangerous manner as further described in paragraphs
17 8-9 above. Additionally, Respondent used alcohol and controlled substances in a dangerous
18 manner as follows:

19 a. On April 20, 2013, at 1:35 am., Officer Magdaleno of the California Highway
20 Patrol was on Patrol in Tulare County when he observed Respondent's GMC Sierra Pickup truck
21 observed Respondent driving with expired registration tags and no front license plate. Officer
22 Magdaleno initiated a traffic stop and made contact with Respondent who displayed objective
23 signs of intoxication and appeared disoriented and teary. Respondent performed poorly on the
24 field sobriety tests and was arrested. Respondent was searched subsequent to his arrest and was
25 found with a glass pipe with methamphetamine residue inside. He also had a Xanax pill in his
26 pocket. Respondent admitted to having ingested 15ml of Flexeril at 3 p.m that day and a Xanax
27 the day before. Respondent tested positive for the presence of alcohol and tested positive for
28 amphetamines and methamphetamines. Respondent was travelling with a passenger who was

1 unconscious in the front seat due to his level of intoxication. Both Respondent and his passenger
2 were arrested and both promptly fell asleep in the patrol vehicle until they reached the police
3 station.

4 **FOURTH CAUSE FOR DISCIPLINE**

5 **(Controlled Substances Law Violation)**

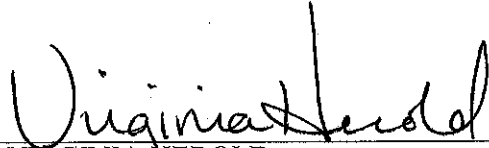
6 16. Respondent is subject to disciplinary action for unprofessional conduct under section
7 4301(j) because Respondent violated the statutes regulating controlled substances in that
8 Respondent possessed and used the controlled substance, Methamphetamine, in violation of
9 Health and Safety Code section 11377(a).

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number 69280, issued to
14 John J. Goonan.;
- 15 2. Ordering John J. Goonan to pay the Board of Pharmacy the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.
- 19

20
21 DATED: 12/12/13


22 VIRGINIA MEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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