

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 GREGORY TUSS  
Deputy Attorney General  
4 State Bar Number 200659  
1515 Clay Street, 20th Floor  
5 Post Office Box 70550  
Oakland, California 94612-0550  
6 Telephone: (510) 622-2143  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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 Number 5015

13 **DANIEL MICHAEL CLAUSER**  
14 **582 San Miguel Court**  
15 **Pleasanton, California 94566**

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

16 **Pharmacy Technician Registration Number**  
17 **TCH 41450,**

Respondent.

18 Complainant Virginia Herold alleges:

19 **PARTIES**

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

22 2. On or about April 5, 2002, the Board issued Pharmacy Technician Registration  
23 Number TCH 41450 to respondent Daniel Michael Clauser. This pharmacy technician  
24 registration was in full force and effect at all times relevant to the charges brought in this  
25 accusation and will expire on July 31, 2015, unless renewed.

26 **JURISDICTION**

27 3. This accusation is brought before the Board under the authority of the following laws.  
28 All section references are to the Business and Professions Code unless otherwise indicated.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

4. Section 4011 states:

“The board shall administer and enforce this chapter and the Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code).”

5. Section 4300 states in part:

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

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

“(1) Suspending judgment.

“(2) Placing him or her upon probation.

“(3) Suspending his or her right to practice for a period not exceeding one year.

“(4) Revoking his or her license.

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

6. Section 4300.1 states:

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

**STATUTORY AND REGULATORY AUTHORITY**

7. Section 490, subdivision (a), states:

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

///

1 8. Section 4301 states in part:

2 "The board shall take action against any holder of a license who is guilty of  
3 unprofessional conduct . . . . Unprofessional conduct shall include, but is not limited to, any of  
4 the following:

5 . . .

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

11 . . .

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

14 . . .

15 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
16 duties of a licensee under this chapter."

17 9. California Code of Regulations, title 16, section 1770, states:

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

24 **DRUGS**

25 10. "Marijuana" is a Schedule I controlled substance pursuant to Health and Safety Code  
26 section 11054, subdivision (d)(13), and a dangerous drug within the meaning of Business and  
27 Professions Code section 4022. It is a recreational drug.

28 ///

1 **COST RECOVERY**

2 11. Section 125.3, subdivision (a), states:

3 "Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
4 proceeding before any board within the department or before the Osteopathic Medical Board,  
5 upon request of the entity bringing the proceeding may request the administrative law judge to  
6 direct a licentiate found to have committed a violation or violations of the licensing act to pay a  
7 sum not to exceed the reasonable costs of the investigation and enforcement of the case."

8 **FACTUAL BACKGROUNDS AND CAUSES FOR DISCIPLINE**

9 **2009 ARREST**

10 12. On January 19, 2009, at about 4:10 a.m., sheriff deputies in Yavapai County, Arizona,  
11 found a vehicle owned by respondent overturned in a highway median. The vehicle had hit a  
12 guard rail then rolled until it came to rest in the median. The vehicle was crushed on all sides. A  
13 front tire was resting on the fender. The battery had been removed and the vehicle abandoned.

14 13. The deputies found respondent asleep at his home later that morning. He gave off a  
15 strong odor of alcohol. He had bruises under both eyes which were consistent with being hit with  
16 an airbag. He also had injuries on his torso which were consistent with being in an accident while  
17 wearing a seat belt.

18 14. Respondent said the night before he had drunk a bottle of whiskey and had smoked  
19 marijuana at his house. He then went to a friend's house and kept drinking. He did not remember  
20 leaving his friend's house, crashing his vehicle, or how he got home. But he said he must have  
21 been the driver of the vehicle that night based on his injuries. He added that he is an alcoholic  
22 and has alcohol-related blackouts.

23 15. Respondent turned over to the deputies a box with a baggie containing about 3.7  
24 grams of marijuana, and a glass pipe with residue.

25 ///

26

27

28

1           16. Respondent was arrested and charged with possession or use of marijuana, a class 1  
2 misdemeanor (Ariz. Rev. Stat. § 13-3405);<sup>1</sup> and two counts of possession of drug paraphernalia,  
3 reduced to class 1 misdemeanors (Ariz. Rev. Stat. § 13-3415).<sup>2</sup>

4           17. On June 8, 2009, in the Prescott Justice Court, Yavapai County State of Arizona,  
5 Case Number 2009011010J, entitled *State of Arizona v. Daniel Michael Clauser*, the court

6 \_\_\_\_\_  
7           <sup>1</sup> Arizona Revised Statutes section 13-3405 states in part:

8           “A. A person shall not knowingly:

9           “1. Possess or use marijuana.”

10           <sup>2</sup> Arizona Revised Statutes section 13-3415 states in part:

11           “A. It is unlawful for any person to use, or to possess with intent to use, drug  
12 paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert,  
13 produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale  
14 or otherwise introduce into the human body a drug in violation of this chapter. Any person who  
15 violates this subsection is guilty of a class 6 felony.

16           ...

17           “F. In this section, unless the context otherwise requires:

18           ...

19           “2. ‘Drug paraphernalia’ means all equipment, products and materials of any kind which  
20 are used, intended for use or designed for use in planting, propagating, cultivating, growing,  
21 harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing,  
22 analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling  
23 or otherwise introducing into the human body a drug in violation of this chapter. It includes:

24           ...

25           “(i) Capsules, balloons, envelopes and other containers used, intended for use or designed  
26 for use in packaging small quantities of drugs.

27           “(j) Containers and other objects used, intended for use or designed for use in storing or  
28 concealing drugs.

          ...

          “(l) Objects used, intended for use or designed for use in ingesting, inhaling or otherwise  
introducing marijuana, a narcotic drug, a dangerous drug, hashish or hashish oil into the human  
body, such as:

          “(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens,  
permanent screens, hashish heads or punctured metal bowls.”

1 dismissed all charges against respondent after he had completed a drug education and counseling  
2 program.

3 **FIRST CAUSE FOR DISCIPLINE**  
4 **Business and Professions Code section 4301, subdivision (h)**  
5 **Unprofessional Conduct – Use of Alcoholic Beverages and Dangerous Drugs in a Manner**  
6 **Dangerous or Injurious to Self or Public**

7 18. The allegations of paragraphs 12-17 are realleged and incorporated by reference as if  
8 fully set forth.

9 19. Respondent has subjected his pharmacy technician registration to disciplinary action  
10 for the unprofessional conduct of using alcoholic beverages and dangerous drugs in a manner  
11 dangerous or injurious to himself or the public (Bus. & Prof. Code, § 4301, subd. (h)). As set  
12 forth in paragraphs 12-17 above, respondent rolled a vehicle on a highway after drinking and  
13 smoking marijuana.

14 **SECOND CAUSE FOR DISCIPLINE**  
15 **Business and Professions Code section 4301, subdivision (j)**  
16 **Unprofessional Conduct – Violation of Statutes Regulating Controlled Substances and**  
17 **Dangerous Drugs**

18 20. The allegations of paragraphs 12-17 are realleged and incorporated by reference as if  
19 fully set forth.

20 21. Respondent has subjected his pharmacy technician registration to disciplinary action  
21 for the unprofessional conduct of violating statutes regulating controlled substances and dangerous  
22 drugs (Bus. & Prof. Code, § 4301, subd. (j)). As set forth in paragraphs 12-17 above, respondent  
23 possessed marijuana and drug paraphernalia in violation of Arizona statutes.

24 **2012 ARREST AND CONVICTION**

25 22.. Respondent submitted a renewal application to the Board dated June 21, 2013. On  
26 the application, he indicated that he had been convicted of a crime.

27 23. On November 16, 2012, at about 10:10 p.m., police in Prescott, Arizona, received  
28 report that a car had almost hit another vehicle, then had run off road and had gotten a flat tire.  
The driver of the car was reported to still be changing the tire.

///

1           24. The police found respondent changing a tire at the location. The driver of the other  
2 vehicle identified respondent as the driver of the car that almost hit his vehicle.

3           25. Respondent said he did not know what happened to the tire. Respondent did not have  
4 his driver's license or registration. He had red, bloodshot, watery eyes, and a strong odor of an  
5 alcoholic beverage coming from his breath. He admitted to running off the road. He also  
6 admitted to having three drinks and to drinking rum. He asked the officer several times if he  
7 could walk home, and stated he knew that he should not have gotten into his car. His  
8 performance on the field sobriety tests led the officer to believe respondent was under the  
9 influence of alcohol.

10           26. Respondent was arrested and charged with two counts of driving or actual physical  
11 control of a vehicle while under the influence, class 1 misdemeanors (Ariz. Rev. Stat. § 28-  
12 1381(A)(1) &(2));<sup>3</sup> and driving or actual physical control of a vehicle while under the extreme  
13 influence of intoxicating liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)).<sup>4</sup>  
14 Breath tests had measured respondent's blood alcohol level at 0.175 and 0.179 percent.

15           27. On December 26, 2012, in the City of Prescott [Arizona] Magistrate Court, Case  
16 Number 2012110672C, entitled *State of Arizona v. Daniel Michael Clauser*, respondent pled

---

17           <sup>3</sup> Arizona Revised Statutes section 28-1381 states in part:

18           “A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this  
19 state under any of the following circumstances:

20           “1. While under the influence of intoxicating liquor, any drug, a vapor releasing substance  
21 containing a toxic substance or any combination of liquor, drugs or vapor releasing substances if  
the person is impaired to the slightest degree.

22           “2. If the person has an alcohol concentration of 0.08 or more within two hours of driving  
23 or being in actual physical control of the vehicle and the alcohol concentration results from  
alcohol consumed either before or while driving or being in actual physical control of the  
vehicle.”

24           <sup>4</sup> Arizona Revised Statutes section 28-1382 states in part:

25           “A. It is unlawful for a person to drive or be in actual physical control of a vehicle in this  
26 state if the person has an alcohol concentration as follows within two hours of driving or being in  
actual physical control of the vehicle and the alcohol concentration results from alcohol  
consumed either before or while driving or being in actual physical control of the vehicle:

27           “1. 0.15 or more but less than 0.20.”  
28

1 guilty to driving or actual physical control while under the extreme influence of intoxicating  
2 liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)). The other charges were  
3 dismissed. On February 27, 2013, respondent was sentenced to 1 year unsupervised probation.  
4 This probationary sentence included 9 days' incarceration, installation of an interlock device in  
5 lieu of 21 additional days' incarceration, and 5 days' community service.

6 **THIRD CAUSE FOR DISCIPLINE**  
7 **Business and Professions Code section 490, subdivision (a)**  
8 **Conviction Substantially Related**

9 28. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if  
10 fully set forth.

11 29. Respondent has subjected his pharmacy technician registration to disciplinary action  
12 for being convicted of a crime substantially related to the qualifications, functions, or duties of a  
13 pharmacy technician (Bus. & Prof. Code, § 490, subd. (a)). As set forth in paragraphs 22-27  
14 above, respondent was convicted in Prescott, Arizona, of driving or having actual physical control  
15 of a vehicle while under the extreme influence of intoxicating liquor, a class 1 misdemeanor  
16 (Ariz. Rev. Stat. § 28-1382(A)(1)).

17 **FOURTH CAUSE FOR DISCIPLINE**  
18 **Business and Professions Code section 4301, subdivision (h)**  
19 **Unprofessional Conduct – Use of Alcoholic Beverage in a Manner Dangerous or Injurious**  
20 **to Self or Public**

21 30. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if  
22 fully set forth.

23 31. Respondent has subjected his pharmacy technician registration to disciplinary action  
24 for the unprofessional conduct of using alcoholic beverages in a manner dangerous or injurious to  
25 himself or the public (Bus. & Prof. Code, § 4301, subd. (h)). As set forth in paragraphs 22-27  
26 above, respondent drove or had physical control of a vehicle while under the extreme influence of  
27 intoxicating liquor. He had almost hit another vehicle, then had run off road and had gotten a flat  
28 tire.

///



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FIFTH CAUSE FOR DISCIPLINE**  
**Business and Professions Code section 4301, subdivision (l)**  
**Unprofessional Conduct – Conviction Substantially Related**

32. The allegations of paragraphs 22-27 are realleged and incorporated by reference as if fully set forth.

33. Respondent has subjected his pharmacy technician registration to disciplinary action for the unprofessional conduct of being convicted of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd. (l)). As set forth in paragraphs 22-27 above, respondent was convicted in Prescott, Arizona, of driving or having actual physical control of a vehicle while under the extreme influence of intoxicating liquor, a class 1 misdemeanor (Ariz. Rev. Stat. § 28-1382(A)(1)).

**PRAYER**

WHEREFORE, complainant requests that a hearing be held on the matters alleged in this accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 41450 issued to Daniel Michael Clauser;
2. Ordering Daniel Michael Clauser 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; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 4/8/14 Virginia Herold  
VIRGINIA HEROLD  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
*Complainant*

SF2013406725  
90368237.doc