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

12 In the Matter of the Accusation Against:

Case No. 5319

13 **YVETTE K. KONSTANTINOVA**
14 **5664 Arbor Grove Court**
San Diego, CA 92121

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 66537**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On December 15, 2005, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 66537 to Yvette K. Konstantinova (Respondent). Respondent has also
24 been known as Yvette Kirilova Konstantinova. The Pharmacy Technician Registration was in
25 full force and effect at all times relevant to the charges brought herein and will expire on
26 February 28, 2015, unless renewed.

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4. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

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.

6. Section 482 of the Code states:

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

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

7. Section 4301 of the Code states:

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Accusation CSBP Case Number 5319

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

5 (l) The conviction of a crime substantially related to the qualifications,
6 functions, and duties of a licensee under this chapter. The record of conviction of
7 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
8 States Code regulating controlled substances or of a violation of the statutes of
9 this state regulating controlled substances or dangerous drugs shall be conclusive
10 evidence of unprofessional conduct. In all other cases, the record of conviction
11 shall be conclusive evidence only of the fact that the conviction occurred. The
12 board may inquire into the circumstances surrounding the commission of the
13 crime, in order to fix the degree of discipline or, in the case of a conviction not
14 involving controlled substances or dangerous drugs, to determine if the conviction
15 is of an offense substantially related to the qualifications, functions, and duties of
16 a licensee under this chapter. A plea or verdict of guilty or a conviction following
17 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
18 provision. The board may take action when the time for appeal has elapsed, or the
19 judgment of conviction has been affirmed on appeal or when an order granting
20 probation is made suspending the imposition of sentence, irrespective of a
21 subsequent order under section 1203.4 of the Penal Code allowing the person to
22 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
23 the verdict of guilty, or dismissing the accusation, information, or indictment.

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REGULATORY PROVISIONS

8. California Code of Regulations, title 16, section 1769, states:

(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.

9. 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.

COST RECOVERY

10. 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(August 11, 2014 Conviction for Driving with a BAC .08 Percent or More on June 2, 2014)

11. Respondent has subjected her pharmacy technician registration to discipline under Code sections 490 and 4301, subdivision (I), in that she was convicted of crimes that are substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The circumstances are as follows:

a. On August 11, 2014, in a criminal proceeding entitled *The People of the State of California v. Yvette Kirilova Konstantinova*, in the San Diego County Superior Court, Central Courthouse, Criminal Division Case Number M186503, Respondent was convicted on her plea of no contest to violating Vehicle Code (VC) sections 23152, subdivisions (a), driving while under the influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, misdemeanors. Respondent admitted and the court found true the allegation that pursuant to VC sections 23626 and 23540, within ten years of violating VC section 23152, subdivisions (a) and (b), mentioned above, on February 16, 2008, Respondent committed a separate violation of VC section 23152, subdivision (b), driving with a BAC of 0.08

1 percent or more, a misdemeanor resulting in a conviction on April 3, 2008, in case number
2 M044374, detailed in paragraph 15, below.

3 b. As a result of the convictions, on August 11, 2014, Respondent was
4 sentenced to be committed to the custody of the San Diego County Sheriff for 96 hours, to be
5 served under the work release program. Respondent was granted five years summary probation
6 under standard alcohol conditions. Respondent was ordered to pay fines and restitution and
7 render 20 days of work under the public service program, with credit for two days served.
8 Respondent was also ordered to attend and satisfactorily complete a multiple offender DUI
9 program and a Mothers Against Drunk Driving (MADD) Victim Impact Panel session.
10 Respondent was further ordered to install an ignition interlock device in her vehicle for two
11 years.

12 c. The facts that led to the conviction are that on June 2, 2014, Respondent
13 was reported as a possible drunk driver while she was driving in the Carmel Mountain Road and
14 Paseo Cardiel area in San Diego, California. Respondent continued driving to her residence
15 where responding officers from the San Diego Police Department (SDPD) followed. One police
16 officer walked up to Respondent and smelled alcohol from Respondent's person and from her
17 breath as she talked. Respondent's eyes were glassy and she was unable to stand without
18 swaying. Respondent's clothes were disheveled and her speech was slurred and difficult to
19 understand. Respondent failed the series of field sobriety tests, which she could not complete.
20 Respondent could not complete a preliminary alcohol sensor test either. Respondent was arrested
21 and transported to the SDPD headquarters, where she consented to chemical breath tests.
22 Respondent's subsequent chemical test results indicated a BAC of .24 percent and .23 percent
23 after three minutes.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

26 12. Respondent has subjected her pharmacy technician registration to discipline under
27 Code section 4301, subdivision (h) in that on June 2, 2014, she used alcohol to the extent and in

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1 a manner that was dangerous and injurious to herself and to the public, as described in the cause
2 above, which is incorporated by reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Conviction of Alcohol Related Misdemeanors)**

5 13. Respondent has subjected her pharmacy technician registration to discipline under
6 Code section 4301, subdivision (k) in that on August 11, 2014, she was convicted of more than
7 one misdemeanor involving the use or consumption of alcohol.

8 **DISCIPLINARY CONSIDERATIONS**

9 14. To determine the degree of discipline, if any, to be imposed on Respondent,
10 Complainant alleges:

11 15. On April 3, 2008, in a prior criminal proceeding entitled *The People of the State*
12 *of California v. Yvette Kirilova Konstantinova*, in the San Diego County Superior Court, Central
13 Courthouse, Criminal Division Case Number M044374, Respondent was convicted on her plea
14 of no contest to violating VC section 23152, subdivision (b), driving with a BAC of 0.08 percent
15 or more, a misdemeanor. A misdemeanor charge for violation of VC section 23152, subdivision
16 (a), DUI, was dismissed pursuant to a plea bargain. As a result of the conviction, on April 3,
17 2008, Respondent was sentenced to five years summary probation under standard alcohol
18 conditions and ordered to attend and satisfactorily complete a first offender DUI program for
19 nine months and a MADD Victim Impact Panel session. Respondent was also ordered to pay
20 fines, fees, restitution, and penalty assessments and render 15 days work under the public service
21 program, with credit for two days served. The facts that led to the conviction are that on
22 February 16, 2008, while driving on Stalmer Street in San Diego, California, Respondent's car
23 crashed into a legally parked vehicle. Respondent stayed by her car until responding officers
24 from the SDPD arrived. A police officer initiated contact with Respondent and smelled alcohol
25 from Respondent's person and from her breath. Respondent's face was lax and she swayed while
26 standing. Respondent failed the series of field sobriety tests, which she could not complete.
27 Respondent was arrested and transported to the SDPD headquarters, where she consented to
28 provide a blood sample, which upon testing indicated a BAC of .32 percent.

16. As a result of Respondent's conviction, detailed in paragraph 15, above, on October 25, 2010, the Board issued Respondent Citation Number CI 2008 38793, ordering her to pay a fine assessed at \$200.00. The citation included the following charges:

a. Respondent violated Code section 4301, subdivision (h), in that on February 16, 2008, she used alcohol in a manner dangerous to herself and to others.

b. Respondent violated Code section 4301, subdivision (l), in that on April 3, 2008, Respondent was convicted of a misdemeanor substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 66537,
issued to Yvette K. Konstantinova;

2. Ordering Yvette K. Konstantinova 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:

1/17/15

Virginia Hend

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

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