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

12
13 In the Matter of the Accusation Against:

Case No. 5625

14 **DANIEL JEAN-PAUL MURPHY**
40721 La Salle Place
15 Murrieta, CA 92563

FIRST AMENDED
ACCUSATION

16 **Pharmacy Technician Registration**
17 **No. TCH 72306**

Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

24 2. On or about October 24, 2006, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 72306 to Daniel Jean-Paul Murphy (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2016, unless renewed.

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JURISDICTION

3. This First Amended Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300(a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code 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.

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STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

(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.

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

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

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or 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 been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

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

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

10. 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).

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(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.

COSTS

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, 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

(September 23, 2011 Criminal Conviction for Resisting Arrest on October 17, 2010)

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

a. On September 23, 2011, in a criminal proceeding entitled *People of the State of California v. Daniel Murphy Davila, aka Daniel Jean Murphy, aka Daniel Jean Murphydavila*, in Riverside County Superior Court, case number SWM10007778, Respondent was convicted on his plea of guilty to violating Penal Code section 148(a)(1), willfully resisting/delaying/obstructing a peace officer, a misdemeanor.

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1 Respondent was previously convicted of same offenses on September 10, 2010 and September
2 23, 2011, within the meaning of Vehicle Code sections 23540 and 23546. (See paragraphs 16
3 and 17, below.) Pursuant to a plea agreement, the court dismissed an additional count of
4 violating Vehicle Code section 23152(a), driving under the influence.

5 b. As a result of the conviction, Respondent was sentenced to serve 150 days in
6 the Los Angeles County Jail, with pre-custody credit for 29 days, and he was placed on summary
7 probation for five years. Respondent was ordered to complete an 18-month licensed Second-
8 Offender Alcohol and Other Drug Education and Counseling Program, a Hospital and Morgue
9 Program, and a MADD Victim Impact Panel session, pay fines, fees and restitution to the victim,
10 and comply with the DUI probation terms, including a one-year suspension of his driver's
11 license.

12 c. The facts that led to the conviction are that on shortly after two a.m. on
13 December 28, 2014, the California Highway Patrol (CHP) was dispatched to a two-vehicle
14 collision in the vicinity of Rowland Heights. Upon arrival, the CHP officer made contact with
15 Respondent and the second driver (victim) involved in the collision. According to the victim, he
16 was traveling on SR-60 when he observed Respondent approaching from behind on his right side.
17 Without warning, Respondent veered into the victim's lane and side-swiped the victim's vehicle.
18 Upon contact with Respondent, the CHP officer observed that Respondent's eyes were red and
19 watery, there was a strong odor of alcohol on Respondent's breath and person, and his speech
20 was slow. Respondent submitted to a series of field sobriety tests which he was unable to
21 complete as explained and demonstrated by the CHP officer. Respondent agreed to provide a
22 breath sample using the preliminary alcohol screening device. Respondent inflated his cheeks,
23 held his breath, and failed to provide a sample on three attempts. Respondent was arrested for
24 driving under the influence. A blood sample provided by Respondent was analyzed with a BAC
25 of 0.17 percent.

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1 committed while his license was suspended for a previous DUI conviction. As a result of the
2 convictions, Respondent was granted summary probation for 48 months, and was committed to
3 the custody of the Riverside County Sheriff's Work Release Program for 44 days. Respondent
4 was ordered to pay fees and fines, complete an 18-month Drinking Drivers Program, and comply
5 with DUI probation terms.

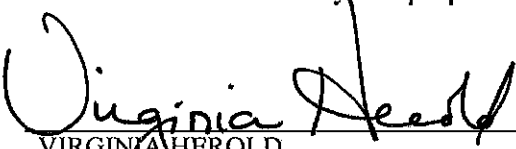
6 19. On August 31, 2012, the Board issued Citation and Fine No. CI 2011 48965 to
7 Respondent alleging that his conduct, as described in paragraphs 16 and 17, above, constituted
8 causes for discipline under Business and Professions Code section 4301(f) – acts of moral
9 turpitude, dishonesty, fraud, deceit or corruption; section 4301(h) – the use of alcoholic beverages
10 to the extent or in a manner as to be dangerous or injurious to oneself; section 4301(k) –
11 conviction of more than one misdemeanor involving the use, consumption, or self-administration
12 of an alcoholic beverage; and section 4301(l) – conviction of a crime substantially related to the
13 practice of pharmacy. Respondent complied with the citation on September 25, 2012.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72306,
18 issued to Daniel Jean-Paul Murphy;
- 19 2. Ordering Daniel Jean-Paul Murphy to pay the Board of Pharmacy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

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24 DATED: 1/21/16


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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14 **DANIEL JEAN-PAUL MURPHY**
15 **40721 La Salle Place**
Murrieta, CA 92563

A C C U S A T I O N

16 **Pharmacy Technician Registration**
17 **No. TCH 72306**

18 Respondent.

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 October 24, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 72306 to Daniel Jean-Paul Murphy (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 October 31, 2016, unless renewed.

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1 **JURISDICTION**

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3 Consumer Affairs, under the authority of the following laws. All section references are to the
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5 4. Section 4300(a) of the Code states "Every license issued may be suspended or
6 revoked."

7 5. Section 4300.1 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
- 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 board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 license, upon the ground that the applicant or the licensee has been convicted of a crime
substantially related to the qualifications, functions, and duties of the licensee in
question, the record of conviction of the crime shall be conclusive evidence of the fact
that the conviction occurred, but only of that fact, and the board may inquire into the
circumstances surrounding the commission of the crime in order to fix the degree of

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

10

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

16

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

10. 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).

1 (2) Total criminal record.

2 (3) The time that has elapsed since commission of the act(s) or offense(s).

3 (4) Whether the licensee has complied with all terms of parole, probation,
4 restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

6 11. California Code of Regulations, title 16, section 1770, states:

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

11 COSTS

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

18 FIRST CAUSE FOR DISCIPLINE

19 (March 19, 2015 Criminal Conviction for DUI on December 28, 2014)

20 13. Respondent has subjected his registration to discipline under sections 490 and 4301(I)
21 of the Code in that he was convicted of a crime that is substantially related to the qualifications,
22 duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On March 19, 2015, in a criminal proceeding entitled *People of the State of*
24 *California v. Daniel Jean Paul Murphydavila*, in Los Angeles County Superior Court, case
25 number 5JB01336, Respondent was convicted on his plea of nolo contendere to violating Vehicle
26 Code section 23152(b), driving with a blood alcohol concentration (BAC) of .08 or more, a
27 misdemeanor. Respondent admitted, and the court found true the special allegation that
28 Respondent was previously convicted of same offenses on September 10, 2010 and September

1 23, 2011, within the meaning of Vehicle Code sections 23540 and 23546. (See paragraphs 16
2 and 17, below.) Pursuant to a plea agreement, the court dismissed an additional count of
3 violating Vehicle Code section 23152(a), driving under the influence.

4 b. As a result of the conviction, Respondent was sentenced to serve 150 days in
5 the Los Angeles County Jail, with pre-custody credit for 29 days, and he was placed on summary
6 probation for five years. Respondent was ordered to complete an 18-month licensed Second-
7 Offender Alcohol and Other Drug Education and Counseling Program, a Hospital and Morgue
8 Program, and a MADD Victim Impact Panel session, pay fines, fees and restitution to the victim,
9 and comply with the DUI probation terms, including a one-year suspension of his driver's
10 license.

11 c. The facts that led to the conviction are that on shortly after two a.m. on
12 December 28, 2014, the California Highway Patrol (CHP) was dispatched to a two-vehicle
13 collision in the vicinity of Rowland Heights. Upon arrival, the CHP officer made contact with
14 Respondent and the second driver (victim) involved in the collision. According to the victim, he
15 was traveling on SR-60 when he observed Respondent approaching from behind on his right side.
16 Without warning, Respondent veered into the victim's lane and side-swiped the victim's vehicle.
17 Upon contact with Respondent, the CHP officer observed that Respondent's eyes were red and
18 watery, there was a strong odor of alcohol on Respondent's breath and person, and his speech
19 was slow. Respondent submitted to a series of field sobriety tests which he was unable to
20 complete as explained and demonstrated by the CHP officer. Respondent agreed to provide a
21 breath sample using the preliminary alcohol screening device. Respondent inflated his cheeks,
22 held his breath, and failed to provide a sample on three attempts. Respondent was arrested for
23 driving under the influence. A blood sample provided by Respondent was analyzed with a BAC
24 of 0.17 percent.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Dangerous Use of Alcohol)**

27 14. Respondent has subjected his registration to disciplinary action under section 4301(h)
28 of the Code for unprofessional conduct in that on or about December 28, 2014, Respondent

1 operated a motor vehicle while substantially impaired by alcohol, as described in paragraph 13,
2 above.

3 DISCIPLINARY CONSIDERATIONS

4 15. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
5 to California Code of Regulations, title 16, section 1769, Complainant alleges:

6 16. On September 16, 2010, in a criminal proceeding entitled *People of the State of*
7 *California v. Daniel Murphy Davila, aka Daniel Jean Murphy Paul, aka Daniel Jean*
8 *Murphydavila Paul*, in Riverside County Superior Court, case number SWM10005925,
9 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
10 driving under the influence, Vehicle Code section 23152(b), driving with a BAC of .08 or more,
11 and Vehicle Code section 14601.1(a), knowingly driving on a suspended license, misdemeanors.
12 As a result of the convictions, Respondent was granted summary probation for three years, and he
13 was committed to the custody of the Riverside County Sheriff's Labor Program for eight days.
14 Respondent was ordered to pay fees and fines, complete a four-month First Offender DUI
15 Program, and comply with DUI probation terms.

16 17. On September 23, 2011, in a criminal proceeding entitled *People of the State of*
17 *California v. Daniel Murphy Davila, aka Daniel Jean Murphy Paul, aka Daniel Jean*
18 *Murphydavila Paul*, in Riverside County Superior Court, case number SWM1106046,
19 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
20 driving under the influence, Vehicle Code section 23152(b), driving with a BAC of .08 or more,
21 and Vehicle Code section 14601.1(a), knowingly drive on a suspended license, misdemeanors.
22 Respondent admitted, and the court found true, the special allegations that Respondent was
23 previously convicted of the same offense on September 16, 2010, and that the offense was
24 committed while his license was suspended for a previous DUI conviction. As a result of the
25 convictions, Respondent was granted summary probation for 48 months, and was committed to
26 the custody of the Riverside County Sheriff's Work Release Program for 44 days. Respondent
27 was ordered to pay fees and fines, complete an 18-month Drinking Drivers Program, and comply
28 with DUI probation terms.

