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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 No. 5651

13 **BRANDON EUGENE HIGHTOWER**
P.O. Box 1036
Helendale, CA 92342

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
135312

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

22 2. On October 28, 2013, the Board issued Pharmacy Technician Registration
23 Number TCH 135312 to Brandon Eugene Hightower (Respondent). The Pharmacy Technician
24 Registration expired on August 31, 2015, and has not been renewed.

25 **JURISDICTION**

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

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

3 5. Code section 4300.1 states:

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

10 STATUTORY PROVISIONS

11 6. Code section 482 states:

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

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

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

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

18 7. Code section 4301 states, in pertinent part:

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

23 ...

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

...
29

(i) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of
a violation of Chapter 13 (commencing with section 801) of Title 21 of the United
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
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1 board may inquire into the circumstances surrounding the commission of the
2 crime, in order to fix the degree of discipline or, in the case of a conviction not
3 involving controlled substances or dangerous drugs, to determine if the conviction
4 is of an offense substantially related to the qualifications, functions, and duties of
5 a licensee under this chapter. A plea or verdict of guilty or a conviction following
6 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this
7 provision. The board may take action when the time for appeal has elapsed, or the
8 judgment of conviction has been affirmed on appeal or when an order granting
9 probation is made suspending the imposition of sentence, irrespective of a
10 subsequent order under section 1203.4 of the Penal Code allowing the person to
11 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
12 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. Code section 125.3 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

1 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
3 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
4 may be included in a stipulated settlement.

5 **FIRST CAUSE FOR DISCIPLINE**

6 **(Sep. 29, 2015 Conviction for Driving with a BAC of .08% or More on March 12, 2015)**

7 11. Respondent has subjected his Pharmacy Technician Registration to discipline
8 under Code sections 490 and 4301, subdivision (l), in that he was convicted of a crime that is
9 substantially related to the qualifications, functions, and duties of a registered pharmacy
10 technician. The circumstances are as follows:

11 a. On September 29, 2015, in a criminal proceeding entitled *The People of*
12 *the State of California v. Brandon Eugene Hightower*, in the San Bernardino County Superior
13 Court, San Bernardino Justice Center, Court Case Number TSB1501382, Respondent was
14 convicted on his plea of *nolo contendere* to violating Vehicle Code (VC) section 23152,
15 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a
16 misdemeanor. A misdemeanor charge for violation of VC section 23152, subdivision (a), driving
17 under the influence (DUI) of alcohol, was dismissed under a plea bargain.

18 b. As a result of the conviction, on September 29, 2015, Respondent was
19 sentenced to serve two days in a San Bernardino County Jail Facility, with credit for two days
20 served. Respondent was granted 36 months probation under standard alcohol conditions and
21 ordered to pay fines, fees, restitution, and assessments. Respondent was also ordered to attend
22 and satisfactorily complete a nine-month DUI Program.

23 c. The facts that led to the conviction are that on March 12, 2015,
24 Respondent was involved in a traffic collision while driving westbound on state route SR-210,
25 west of Little Mountain Drive in San Bernardino, California. Responding officers from the San
26 Bernardino California Highway Patrol (CHP) area office found Respondent standing in the
27 center median of the scene of the accident. Upon contact with Respondent, a CHP officer
28 immediately smelled alcohol emitting from Respondent's breath and body. The officer also

1 observed Respondent's bloodshot eyes, slurred speech, and sway from side to side. Respondent
2 admitted to drinking Bud Light and a dose of Xanax and Prozac earlier in the day. Respondent
3 failed to perform a series of field sobriety tests as explained and demonstrated. Respondent
4 provided breath samples for the preliminary alcohol screen, which indicated a BAC of .253
5 percent and .235 percent. Respondent was arrested and transported to and booked at the Central
6 Detention Center, where he provided a blood sample.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Dangerous Use of Drugs and Alcohol)**

9 12. Respondent has subjected his Pharmacy Technician Registration to discipline
10 under Code section 4301, subdivision (h) in that on March 12, 2015, he used drugs and alcohol
11 to the extent and in a manner that was dangerous and injurious to himself and to the public, as
12 described in paragraph 11, above, which is incorporated by reference.

13 **PRAYER**

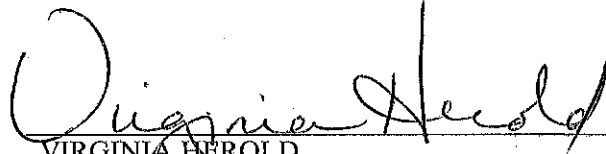
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH
17 135312, issued to Brandon Eugene Hightower;

18 2. Ordering Brandon Eugene Hightower to pay the Board of Pharmacy the
19 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
20 Professions Code section 125.3; and

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

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24 DATED: 3/7/16



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

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