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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. 5722

13 **JAMES ANDREW STEWART**  
751 Trixis Avenue  
Lancaster, CA 93534

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

14 **Original Pharmacy Technician Registration**  
15 **Number TCH 83148**

16 Respondent.

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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 (“Board.”)

22 2. On or about May 6, 2008, the Board of Pharmacy issued Original Pharmacy  
23 Technician Registration Number TCH 83148 to James Andrew Stewart (“Respondent.”) The  
24 pharmacy technician registration was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on June 30, 2017, unless renewed.

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1 **JURISDICTION**

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

4 4. Section 4300 provides, in pertinent part, that every license issued by the Board is  
5 subject to discipline, including suspension or revocation.

6 5. Section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Section 4301 states, in pertinent part:

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

17 ....

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the  
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
6 indictment.

7 ....

8 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
9 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
10 federal and state laws and regulations governing pharmacy, including regulations established by the  
11 board or by any other state or federal regulatory agency.”

#### 12 **REGULATORY PROVISIONS**

13 7. California Code of Regulations, title 16, section 1770, states:

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

#### 20 **COST RECOVERY**

21 8. Section 125.3 states, in pertinent part, that the Board may request the administrative  
22 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
23 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
24 case.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 9. Respondent is subject to disciplinary action under section 4301, subdivision (l), in  
4 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has  
5 been convicted of a crime substantially related to the qualifications, functions or duties of a  
6 pharmacy technician, as follows:

7 a. On or about February 17, 2016, after pleading *nolo contendere*, Respondent was  
8 convicted of one misdemeanor count of violating Penal Code section 242-243(A) [battery] in the  
9 criminal proceeding entitled *The People of the State of California v. James Andrew Stewart*  
10 (Super. Ct. Los Angeles County, 2016, No. 6AN00720). The court sentenced Respondent to  
11 thirty-six (36) months probation.

12 b. The circumstances surrounding the conviction are that on or about December 13,  
13 2015, while working as a pharmacy technician at a Wal-Mart Pharmacy, Respondent got into an  
14 argument with a patient over the quantity of insulin pens to be dispensed in the patient's  
15 prescription. While they continued to argue, Respondent took off his green pharmacy vest,  
16 walked out of the pharmacy area to where the patient was waiting and attacked the patient, hitting  
17 him several times before Respondent left the pharmacy completely. Following the incident,  
18 Respondent admitted that he hit the patient "around 3-4 times." After being attacked, the victim  
19 developed multiple physical signs of injury, including a swollen left eye and forehead as well as a  
20 large bruise on his left torso.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 10. Respondent is subject to disciplinary action under section 4301 on the grounds of  
24 unprofessional conduct for attacking a patient that was attempting to pick up his prescription from  
25 the pharmacy where Respondent was working. Complainant refers to, and by this reference  
26 incorporates, the allegations set forth in paragraph 9, subparagraphs (a) and (b) inclusive, as  
27 though set forth fully.

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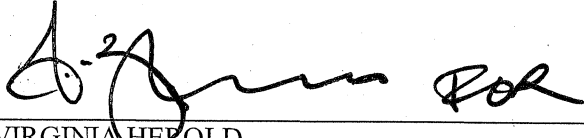
PRAYER

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 Original Pharmacy Technician Registration No. TCH 83148 issued to James Andrew Stewart;
2. Ordering James Andrew Stewart 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: \_\_\_\_\_

04/29/16



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

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