

1 XAVIER BECERRA  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 JOSHUA B. EISENBERG  
Deputy Attorney General  
4 State Bar No. 279323  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 327-1466  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the First Amended Accusation  
Against:

Case No. 5731

**FIRST AMENDED ACCUSATION**

12 **BRENT EUGENE BJERKE**  
13 1900 Ibache Street  
14 South Lake Tahoe, CA 96150

15 Intern Pharmacist Registration No. INT 26913

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 13, 2010, the Board of Pharmacy (Board) issued Intern  
24 Pharmacist Registration No. INT 26913 to Brent Eugene Bjerke (Respondent). The Intern  
25 Pharmacist Registration expired on October 31, 2014 and was canceled on November 15, 2014.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

6 4. Section 490 states, in pertinent part:

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

11 “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
12 discipline a licensee for conviction of a crime that is independent of the authority granted under  
13 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
14 of the business or profession for which the licensee’s license was issued.

15 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
16 conviction following a plea of nolo contendere. An action that a board is permitted to take  
17 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
18 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
19 made suspending the imposition of sentence, irrespective of a subsequent order under Section  
20 1203.4 of the Penal Code.”

21 5. Section 493 states:

22 "Notwithstanding any other provision of law, in a proceeding conducted by a board within  
23 the department pursuant to law to deny an application for a license or to suspend or revoke a  
24 license or otherwise take disciplinary action against a person who holds a license, upon the  
25 ground that the applicant or the licensee has been convicted of a crime substantially related to the  
26 qualifications, functions, and duties of the licensee in question, the record of conviction of the  
27 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,  
28 and the board may inquire into the circumstances surrounding the commission of the crime in

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

3 6. Section 4300 provides that every license issued by the Board is subject to discipline,  
4 including suspension or revocation.

5 7. Section 4300.1 states:

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

11 8. Section 4301 states, in pertinent part:

12 "The board shall take action against any holder of a license who is guilty of unprofessional  
13 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

14 Unprofessional conduct shall include, but is not limited to, any of the following:

15 . . . .

16 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
17 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
18 whether the act is a felony or misdemeanor or not.

19 "(g) Knowingly making or signing any certificate or other document that falsely represents  
20 the existence or nonexistence of a state of facts.

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

26 . . . .

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1 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
2 case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crimes)**

5 11. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
6 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent  
7 was convicted of crimes that, to a substantial degree, evidence a present or potential unfitness to  
8 perform the functions of an intern pharmacist in a manner consistent with the public health,  
9 safety, or welfare.

10 A. On or about or about February 1, 2017, Respondent was convicted of a felony  
11 violation of Penal Code section 243, subdivision (d), (battery with serious bodily injury), in the  
12 criminal proceeding entitled *The People of the State of California v. Brent Eugene Bjerke* (Super.  
13 Ct. Ventura County Case No. 2013027335). The underlying circumstances are that on or about  
14 August 31, 2013, following a verbal argument, Respondent battered the victim resulting in  
15 serious bodily injury to the victim's face and body and Respondent fled from the scene. The  
16 victim was transported to the hospital with a broken nose, broken sinus, broken left orbital bone,  
17 left ear contusion, and chest contusion. An officer observed Respondent to be intoxicated with  
18 blood on his clothes and arms. Respondent admitted that he had been involved in a fight.

19 B. On or about May 29, 2001, Respondent was convicted of one misdemeanor  
20 count of violating Penal Code section 602, subdivision (L) (trespass: occupying property without  
21 consent) in the criminal proceeding entitled *The People of the State of California v. Brent Eugene*  
22 *Bjerke* (Super. Ct. Santa Barbara County, 2001, No. 1055771). The court sentenced Respondent  
23 to serve 10 days in jail and placed him on 12 months probation, with terms and conditions. The  
24 circumstances underlying the conviction are that on or about April 25, 2001, Respondent entered  
25 the land under cultivation or enclosed by fence, belonging to, or occupied by another where signs  
26 forbidding trespass are displayed, without the permission of the owner of the land, the owner's  
27 agent, or the person in lawful possession.

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**SECOND CAUSE FOR DISCIPLINE**

**(Dangerous Use of Alcohol)**

12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself, another person, or the public. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully.

**THIRD CAUSE FOR DISCIPLINE**

**(Acts Involving Dishonesty, Fraud, or Deceit)**

13. Respondent is subject to disciplinary action section 4301, subdivision (f), in that on or about April 26, 2013, Respondent committed acts involving dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure another, by failing to disclose his May 29, 2001 conviction case on his application for licensure as a pharmacist. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11 and below in paragraph 14, inclusive, as though set forth fully.

**FOURTH CAUSE FOR DISCIPLINE**

**(False Statement of Fact)**

14. Respondent is subject to disciplinary action section 4301, subdivision (g), in that Respondent knowingly made a false statement of fact on his application for a pharmacist license, by failing to disclose his complete criminal history. On or about April 26, 2013, when Respondent filled out his application for licensure he was asked: "Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country? Respondent answered: "Yes" to this question. However, he only disclosed his June 2001 conviction for possession while driving. Respondent failed to disclose his May 29, 2001 conviction case. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, as though set forth fully. In addition, Respondent signed under penalty of perjury, under the laws of the State of California, that the foregoing was true and correct on his application for licensure.

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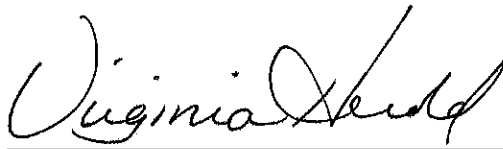
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PRAYER

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 Intern Pharmacist Registration No. INT 26913, issued to Brent Eugene Bjerke;
2. Ordering Brent Eugene Bjerke 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: 3/6/17



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

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Bjerke First Amended Accusation.docx  
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1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA L. SCHNEIDER  
Senior Assistant Attorney General  
3 LINDA L. SUN  
Supervising Deputy Attorney General  
4 State Bar No. 207108  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-6375  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **BRENT EUGENE BJERKE**  
8415 Mainsail Dr.  
13 Bakersfield, CA 93312  
14 Intern Pharmacist Registration No. INT 26913  
15 Respondent.

Case No. 5731

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

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about October 13, 2010, the Board of Pharmacy (Board) issued Intern  
22 Pharmacist Registration No. INT 26913 to Brent Eugene Bjerke (Respondent). The Intern  
23 Pharmacist Registration expired on October 31, 2014 and was canceled on November 15, 2014.

24 **JURISDICTION**

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

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**STATUTORY PROVISIONS**

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4. Section 490 states, in pertinent part:

“(a) 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.

“(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee’s license was issued.

“(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken 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.”

5. Section 493 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 discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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1           6.    Section 4300 provides that every license issued by the Board is subject to discipline,  
2 including suspension or revocation.

3           7.    Section 4300.1 states:

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

9           8.    Section 4301 states, in pertinent part:

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

13          . . . .

14          “(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
15 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
16 whether the act is a felony or misdemeanor or not.

17          “(g) Knowingly making or signing any certificate or other document that falsely represents  
18 the existence or nonexistence of a state of facts.

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

24          . . . .

25          “(l) The conviction of a crime substantially related to the qualifications, functions, and  
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

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

15 **REGULATORY PROVISIONS**

16 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

23 **COST RECOVERY**

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

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 11. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
4 (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent  
5 was convicted of a crime that, to a substantial degree, evidenced a present or potential unfitness to  
6 perform the functions of an intern pharmacist in a manner consistent with the public health, safety,  
7 or welfare. Specifically, On or about May 29, 2001, Respondent was convicted of one  
8 misdemeanor count of violating Penal Code section 602, subdivision (L) [trespass: occupying  
9 property without consent] in the criminal proceeding entitled *The People of the State of California*  
10 *v. Brent Eugene Bjerke* (Super. Ct. Santa Barbara County, 2001, No. 1055771). The court  
11 sentenced Respondent to serve 10 days in jail and placed him on 12 months probation, with terms  
12 and conditions. The circumstances underlying the conviction are that on or about April 25, 2001,  
13 Respondent entered the land under cultivation or enclosed by fence, belonging to, or occupied by  
14 another where signs forbidding trespass are displayed, without the permission of the owner of the  
15 land, the owner's agent, or the person in lawful possession.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Acts Involving Dishonesty, Fraud, or Deceit)**

18 12. Respondent is subject to disciplinary action section 4301, subdivision (f), in that on or  
19 about April 26, 2013, Respondent committed acts involving dishonesty, fraud, or deceit with the  
20 intent to substantially benefit himself, or substantially injure another, by failing to disclose his May  
21 29, 2001 conviction case on his application for licensure as a pharmacist. Complainant refers to,  
22 and by this reference incorporates, the allegations set forth above in paragraph 11 and below in  
23 paragraph 13, inclusive, as though set forth fully.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(False Statement of Fact)**

26 13. Respondent is subject to disciplinary action section 4301, subdivision (g), in that  
27 Respondent knowingly made a false statement of fact on his application for a pharmacist license,  
28 by failing to disclose his complete criminal history. On or about April 26, 2013, when Respondent

1 filled out his application for licensure he was asked: "Have you ever been convicted of any crime in  
2 any state, the USA and its territories, military court or foreign country? Respondent answered:  
3 "Yes" to this question. However, he only disclosed his June 2001 conviction for possession while  
4 driving. Respondent failed to disclose his May 29, 2001 conviction case. Complainant refers to,  
5 and by this reference incorporates, the allegations set forth above in paragraph 11, as though set  
6 forth fully. In addition, Respondent signed under penalty of perjury, under the laws of the State of  
7 California, that the foregoing was true and correct on his application for licensure.

#### 8 **FOURTH CAUSE FOR DISCIPLINE**

##### 9 **(Dangerous Use of Alcohol)**

10 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that  
11 Respondent used alcoholic beverages alcoholic beverages to the extent or in a manner as to be  
12 dangerous or injurious to himself, another person, or the public. Specifically, on or about May 23,  
13 2013, Respondent was arrested by the Los Angeles County Sheriff's Department for violating  
14 Penal Code section 243, subdivision (d) [battery with serious bodily injury]. During a verbal  
15 argument, Respondent battered the victim resulting in serious bodily injury to the victim's face and  
16 body and Respondent fled from the scene. The victim was transported to the hospital with a  
17 broken nose, broken sinus, broken left orbital bone, left ear contusion, and chest contusion. An  
18 officer observed Respondent to be intoxicated with blood on his clothes and arms. Respondent  
19 admitted that he had been involved in a fight.

#### 20 **PRAYER**

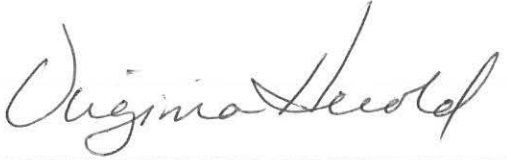
21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
22 and that following the hearing, the Board of Pharmacy issue a decision:

- 23 1. Revoking or suspending Intern Pharmacist Registration No. INT 26913, issued to  
24 Brent Eugene Bjerke;
- 25 2. Ordering Brent Eugene Bjerke to pay the Board of Pharmacy the reasonable costs of  
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3; and
- 28 3. Taking such other and further action as deemed necessary and proper.

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

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