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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. 5842

13 **ELIZABETH CHRISTINE BANEL**

ACCUSATION

14 6201 Jackie Ave.
West Hills, CA 91367

15 Pharmacy Technician Registration
No. TCH 9946

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.
22 2. On or about September 27, 1993, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 9946 to Elizabeth Christine Banel (Respondent). The
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
25 brought herein. The license was cancelled on April 2, 2017 pursuant to Business and Professions
26 Code section 4402, subdivision (e).

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JURISDICTION

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

STATUTORY PROVISIONS

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. Any 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 the provisions of Section 1203.4 of the Penal Code."

5. Section 492 states, in pertinent part:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest."

1 6. Section 493 states:

2 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
3 the department pursuant to law to deny an application for a license or to suspend or revoke a
4 license or otherwise take disciplinary action against a person who holds a license, upon the
5 ground that the applicant or the licensee has been convicted of a crime substantially related to the
6 qualifications, functions, and duties of the licensee in question, the record of conviction of the
7 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
8 and the board may inquire into the circumstances surrounding the commission of the crime in
9 order to fix the degree of discipline or to determine if the conviction is substantially related to the
10 qualifications, functions, and duties of the licensee in question. As used in this section, "license"
11 includes "certificate," "permit," "authority," and "registration."

12 7. Section 4060 provides in pertinent part, that no person shall possess any controlled
13 substance, except that furnished to a person upon the prescription of a physician, dentist,
14 podiatrist, optometrist, veterinarian, or other authorized prescriber.

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

17 9. Section 4300.1 states:

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

23 10. Section 4301 states, in pertinent part:

24 "The board shall take action against any holder of a license who is guilty of unprofessional
25 conduct or whose license has been issued by mistake. Unprofessional conduct shall include, but is
26 not limited to, any of the following:

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

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

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

1 **REGULATORY PROVISIONS**

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

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

9 **COST RECOVERY**

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

14 **FIRST CAUSE FOR DISCIPLINE**

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

16 13. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
18 Respondent has been convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician, as follows:

20 a. On or about September 8, 2015, Respondent was convicted of one misdemeanor
21 count of violating Vehicle Code section 23152, subdivision (b) [driving a vehicle with a blood
22 alcohol content of 0.08% or more] in the criminal proceeding entitled *The People of the State of*
23 *California v. Elizabeth Christine Banel* (Los Angeles County Superior Court Case No.
24 5VY00152). She was sentenced to 36 months summary probation, one day in jail, ordered to pay
25 fines and assessments, and successfully complete a 9-month alcohol counseling program.

26 b. The circumstances surrounding the conviction are that on or about November 15,
27 2014, Respondent collided with another vehicle, causing her to crash into a wall. Officers
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1 responding to the scene noticed Respondent displayed objective symptoms of alcohol
2 intoxication. A subsequent blood test revealed she had a blood alcohol concentration of 0.38%.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Alcohol)**

5 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
6 that she used alcohol to the extent or in a manner as to be dangerous or injurious to herself,
7 another person, or the public. Complainant refers to, and by this reference incorporates, the
8 allegations set forth above in paragraph 13, as though set forth fully.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Violating Provisions of the Pharmacy Act)**

11 15. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
12 that she violated provisions of the Pharmacy Act. Complainant refers to, and by this reference
13 incorporates, the allegations set forth above in paragraph 13, as though set forth fully.

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 No. TCH 9946, issued to
18 Elizabeth Christine Banel;

19 2. Ordering Elizabeth Christine Banel 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; and

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

DATED: 8/10/17

Virginia Herold

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

(rev. 8/4/17)