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

12 In the Matter of the Accusation Against:	Case No. 6101
13 JOHN KENNETH WEBER	A C C U S A T I O N
14 657 Palos Verde Drive	
14 Satellite Beach, FL 32937	
15 Pharmacist License No. RPH 72714	
16 Respondent.	

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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 (Board), Department of Consumer Affairs.
- 23 2. On or about June 22, 2015, the Board issued Pharmacist License Number RPH 72714
24 to John Kenneth Weber (Respondent). The Pharmacist License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on December 31, 2018, unless
26 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 (Code) unless otherwise
4 indicated.

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

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 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.

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
15 the 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
furnished by the applicant or licensee.

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 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

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

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "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 issued by mistake. Unprofessional
8 conduct shall include, but is not limited to, any of the following:

9 ...

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

15 ...

16 (k) The conviction of more than one misdemeanor or any felony involving the
17 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
18 or any combination of those substances.

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

24 REGULATORY PROVISIONS

25 10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

26 (b) When considering the suspension or revocation of a facility or a personal
27 license on the ground that the licensee or the registrant has been convicted of a crime,
28 the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

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- (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.

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

(February 21, 2017 Criminal Conviction for DUI on February 11, 2016)

13. Respondent has subjected his pharmacist license to discipline under sections 490 and 4301, subdivision (1) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

a. On February 21, 2017, in a criminal proceeding entitled *People of the State of California v. John Kenneth Weber*, in San Diego County Superior Court, case number CN364228, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a) – driving under the influence of alcohol, a misdemeanor. Respondent’s blood alcohol concentration (BAC) was assessed at 0.14 percent.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(More than One Misdemeanor Conviction Involving the Consumption of Alcohol)**

3 15. Respondent has subjected his pharmacist license to disciplinary action under section
4 4301, subdivision (k) of the Code for unprofessional conduct in that he was twice convicted of
5 misdemeanor DUI as described in paragraphs 13, above, and 16, below.

6 **DISCIPLINARY CONSIDERATIONS**

7 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
8 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
9 August 14, 2002, in Lake Havasu Consolidated Court (Arizona), case number JTR2002-00605,
10 Respondent was convicted on his plea of guilty to driving under the influence (Arizona Revised
11 Statutes 28-1381A1), a Class I misdemeanor. Respondent was granted summary probation for
12 one year, sentenced to serve 10 days in jail, and ordered to pay a \$650 fine.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacist License Number RPH 72714, issued to John
17 Kenneth Weber;
- 18 2. Ordering John Kenneth Weber to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3; and,
- 21 3. Taking such other and further action as deemed necessary and proper.

22
23 DATED: _____

4/24/17

Virginia Herold

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

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