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

11 In the Matter of the Accusation Against:

Case No. 6165

12 **STEPHEN WAYNE BRANDT**
13 **1614 Camphor Way**
14 **Lodi, CA 95242**

A C C U S A T I O N

15 **Pharmacist License No. RPH 31823**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 4, 1978, the Board issued Pharmacist License Number RPH 31823
22 to Stephen Wayne Brandt (Respondent). The Pharmacist License was in full force and effect at
23 all times relevant to the charges brought herein and will expire on December 31, 2017, unless
24 renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

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 unless otherwise indicated.

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4. Section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Section 4300.1 states:

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

6. Section 4301 states, in pertinent part:

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

....

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

....

(h) The administering to oneself, or any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any other person or to the public . . .

....

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

....

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

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22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Criminal Convictions)**

24 7. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
25 section 4301, subdivision (l), in that on or about March 10, 2017, in the criminal proceeding
26 entitled *People vs. Stephen Brandt*, San Joaquin County Superior Court, Case No. LOD-CR-
27 MDUI-2016-0015553, Respondent was convicted on his plea of nolo contendere of violating
28 Vehicle Code section 23152, subdivision (B) (driving under the influence of alcohol with a blood
alcohol content of .08% or greater) and Vehicle Code section 20002(A) (hit and run with property
damage), both misdemeanors. This conviction is for a crime substantially related to the
qualifications, functions, and duties of a pharmacist. The circumstances of the crime are as
follows: on November 4, 2016, Lodi Police Department Officer A. Blythe was dispatched to the
scene of a reported vehicle hit and run accident. While on route, Officer Blythe contacted the
vehicle subject of the hit and run report disabled and facing the wrong direction of travel in the
opposing lane of traffic. Officer Blythe observed the vehicles front bumper had become
dislodged approximate 100 yards away from the vehicle and that it had significant front end
damage. Upon contacting Respondent and speaking with him, Officer Blythe smelled a strong
odor of alcohol emanating from Respondent and Officer Blythe observed Respondent to have

1 red/watery eyes, slurred speech, and slow responses to questions. When asked to exit the vehicle,
2 Respondent was unable to stand on his own and the groin region of his pants appeared wet from
3 urine. Based on Respondent's inability to stand, Respondent was arrested for driving under the
4 influence of alcohol. A search of Respondent's vehicle resulted in the discovery of two empty
5 11.2 oz. bottles of beer on the front passenger floorboard. At the Lodi City Jail, Respondent
6 consented to a breath test and returned blood alcohol content readings of 0.19% and 0.19%. After
7 being Mirandized, Respondent admitted that he drank three 8 oz. glasses of Gin approximately 2-
8 2.5 hours prior to his encounter with law enforcement.

9 8. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
10 section 4301, subdivision (l), in that on or about March 9, 2017, in the criminal proceeding
11 entitled *People vs. Stephen Wayne Brandt*, Kern County Superior Court, Case No. DM090532A,
12 Respondent was convicted on his plea of nolo contendere of violating Vehicle Code section
13 23152, subdivision (A) (driving under the influence of alcohol), a misdemeanor. This conviction
14 is for a crime substantially related to the qualifications, functions, and duties of a pharmacist. The
15 circumstances of the crime are as follows: on May 6, 2016, California Highway Patrol (CHP)
16 Officer J. Cervantes responded to a dispatch call regarding a disabled vehicle with a possible
17 intoxicated driver. Upon arriving at the scene, additional law enforcement officers had already
18 responded to the scene. Officer Cervantes contacted Respondent whom he observed to have
19 difficulty standing and nearly fall, requiring Officer Cervantes to provide assistance in walking
20 Respondent to Officer Cervantes' patrol vehicle. Officer Cervantes detected the strong and
21 distinct odor of alcohol on Respondent's breath and person and noted that Respondent's speech
22 was heavily slurred. Upon questioning, Respondent admitted to Officer Cervantes that he had
23 been traveling to Coalinga and was consuming "Negra Modelos," on the way.¹ Officer Cervantes
24 then instructed and demonstrated field sobriety tests for Respondent to repeat, which he failed to
25 do. Respondent was arrested and consented to a chemical blood test which returned a blood
26 alcohol level of 0.169%.

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28 ¹ Negra Modelo is a beer.

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SECOND CAUSE FOR DISCIPLINE

(Multiple Convictions Involving Alcohol)

9. Respondent is subject to disciplinary action for unprofessional pursuant to section 4301, subdivision (k), in that Respondent has had more than one misdemeanor conviction involving the use, consumption, or self-administration of alcohol as alleged in Paragraphs 7-8, above.

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

10. Respondent is subject to disciplinary action for unprofessional pursuant to section 4301, subdivision (h), in that Respondent has engaged in the dangerous use of alcohol to an extent dangerous or injurious to himself and others, as alleged in Paragraphs 7-8, above.

FOURTH CAUSE FOR DISCIPLINE

(Moral Turpitude)

11. Respondent is subject to disciplinary action for unprofessional pursuant to section 4301, subdivision (f), in that Respondent has engaged in conduct involving moral turpitude, dishonesty, fraud, deceit, or corruption as alleged in Paragraphs 7-8, above.

AGGRAVATING FACTORS

12. To determine the degree of discipline to be assessed against Respondent, if any, Complainant alleges that on January 30, 2017, the Board issued citation number CI 2016 73662 against Respondent in the amount of \$200. The citation charged Respondent with a violation under section 4301(g) for unprofessional conduct in that Respondent knowingly signed his license renewal application under penalty of perjury that falsely represented that he had completed 30 hours of continuing education knowing that he had not done so and had, in fact, only completed 25 hours. The citation also charged Respondent with violations under section 4231(d) and California Code of Regulations, title 16, section 1732.5, in that Respondent failed to provide documentation substantiating that he completed 30 hours of continuing education required for renewal of his license. Respondent paid his fine on February 9, 2017, and submitted

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1 certificates substantiating the completion of five hours of continuing education after the deadline
2 period.

3 **PRAYER**

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

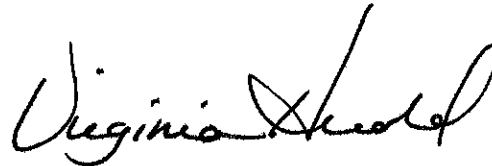
6 1. Revoking or suspending Pharmacist License Number RPH 31823, issued to Stephen
7 Wayne Brandt;

8 2. Ordering Stephen Wayne Brandt to pay the Board of Pharmacy the reasonable costs
9 of the investigation and enforcement of this case, pursuant to Business and Professions Code
10 section 125.3; and,

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

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15 DATED: _____

7/16/17



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

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