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8
9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
11

12 In the Matter of the Accusation Against:

Case No. 6198

13 **VICTOR NORMAN SELL**
14 **9982 Dunbar Lane**
El Cajon, CA 92021

A C C U S A T I O N

15 **Pharmacist License No. RPH 66481**

16 Respondent.
17

18 Complainant alleges:

19 **PARTIES**

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

23 2. On October 27, 2011, the Board issued Pharmacist License Number RPH 66481
24 to Victor Norman Sell (Respondent). The Pharmacist License was in full force and effect at all
25 times relevant to the charges brought herein and will expire on May 31, 2019, 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 (Code) unless otherwise
4 indicated.

5 4. Code section 4300, subdivision (a), provides that every license issued by the Board
6 may be suspended or revoked.

7 5. Code section 4300.1 states:

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

12 **STATUTORY PROVISIONS**

13 6. Code section 482 states:

14 Each board under the provisions of this code shall develop criteria to
15 evaluate 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
19 furnished by the applicant or licensee.

20 7. Code section 4301 states, in pertinent part:

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

23 ...

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

27 ...

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

20

21 REGULATORY PROVISIONS

22 8. California Code of Regulations, title 16, section 1769, states:

23 . . .

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

- 28 (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.

9. 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.

1 **COST RECOVERY**

2 10. Code section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(November 2, 2015 Conviction for Driving Under the Influence on April 3, 2015)**

10 11. Respondent has subjected his Pharmacist License to discipline under Code
11 sections 490 and 4301, subdivision (I), in that he was convicted of a crime substantially related to
12 the qualifications, functions, and duties of a licensed pharmacist. The circumstances are as
13 follows:

14 a. On November 2, 2015, in a criminal proceeding entitled *The People of the*
15 *State of California v. Victor Norman Sell*, in San Diego County Superior Court, Central
16 Courthouse, Case Number M200545, Respondent was convicted on his plea of guilty of
17 violating Vehicle Code (VC) section 23152, subdivision (a), driving a motor vehicle while under
18 the influence of alcohol (DUI), a misdemeanor. A misdemeanor charge for violation of VC
19 section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or
20 more, was dismissed under a plea bargain.

21 b. As a result of the conviction, on November 2, 2015, Respondent was
22 sentenced to summary probation under standard alcohol conditions for five years. Respondent
23 was ordered to complete a Mothers Against Drunk Driving Victim Impact Panel and 10 days of
24 service in a public service program. Respondent was also ordered to attend and satisfactorily
25 complete a nine-month First Offender Alcohol Program, imposed under Assembly Bill (AB)
26 1353 for offenders with a BAC of .20 percent or more at the time of the commission of the
27 offense. Respondent's BAC was .22 percent. Respondent was further ordered to pay fines, fees,
28 restitution, penalties, and assessments. Moreover, Respondent was ordered to install an ignition

1 interlock device (IID) and proscribed to own or operate a vehicle without a certified working IID
2 for a duration of one year.

3 c. The facts that led to the conviction are that on April 3, 2015, while driving
4 northbound on Mercury Street in San Diego, California, Respondent sideswiped the entire left
5 side of a parked vehicle, drove onto the east sidewalk, and collided head-on with a wooden
6 utility pole. An ambulance took Respondent to Sharp Memorial Hospital (SMH) for treatment. A
7 responding officer from the San Diego Police Department followed the ambulance and evaluated
8 Respondent for DUI at SMH. Respondent was subsequently arrested for DUI.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

11 12. Respondent has subjected his Pharmacist License to discipline under Code section
12 4301, subdivision (h) in that on April 3, 2015, he used alcohol to the extent and in a manner that
13 was dangerous and injurious to himself and to the public, as described in paragraph 11, above,
14 which are incorporated by reference.

15 **DISCIPLINARY CONSIDERATIONS**

16 13. To determine the degree of discipline, if any, to be imposed on Respondent,
17 Complainant alleges:

18 a. On October 5, 2007, in a prior criminal proceeding entitled *The People of*
19 *the State of California v. Victor Norman Sell*, in the San Diego County Superior Court, East
20 County Division, Case Number C271836, Respondent was convicted on his plea of guilty of
21 violating Vehicle Code (VC) section 23103, subdivision (a), reckless driving, a misdemeanor. A
22 misdemeanor charge for violation of VC section 23152, subdivision (a), DUI, was dismissed
23 under a plea bargain.

24 b. As a result of the conviction, on October 5, 2007, Respondent was
25 sentenced to summary probation for three years and ordered to pay fines and restitution.

26 c. The facts that led to his conviction are that on June 2, 2007, Respondent
27 sped past law enforcement officers that were parked on a roadside in San Diego County,
28 California. The officers initiated an enforcement stop. When asked, Respondent admitted to

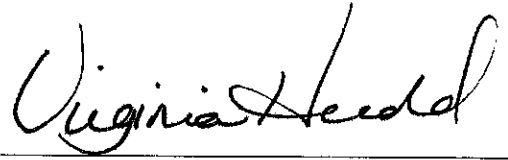
1 drinking two beers. Respondent refused to take a series of field sobriety tests but consented to a
2 breathalyzer test, which indicated his BAC below .08 percent. Respondent was arrested for DUI.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacist License Number RPH 66481, issued to
7 Victor Norman Sell;
- 8 2. Ordering Victor Norman Sell 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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13
14 DATED: 7/17/17



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

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