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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. 6222

13 **HARVEY PEREZ**
2424 W. Flower Ave.
14 Fullerton, CA 92833

A C C U S A T I O N

15 **Intern Pharmacist Registration**
16 **No. INT 38286**

17 Respondent.

18
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 August 19, 2016, the Board issued Intern Pharmacist Registration
24 Number INT 38286 to Harvey Perez (Respondent). The Intern Pharmacist Registration was in
25 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
26 2021, unless renewed.

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JURISDICTION

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

15 4. Section 4300(a) of the Code states "Every license issued may be suspended or
16 revoked."

17 5. Section 4300.1 of the Code provides, in pertinent part, that the expiration,
18 cancellation, forfeiture, suspension, or voluntary surrender of a Board-issued license or
19 registration shall not deprive the Board of jurisdiction to commence or proceed with a
20 disciplinary proceeding, or to render a decision suspending or revoking the license or registration.

STATUTORY PROVISIONS

21 6. Section 482 of the Code states:

22 Each board under the provisions of this code shall develop criteria to evaluate
23 the rehabilitation of a person when:

24 (a) Considering the denial of a license by the board under Section 480; or

25 (b) Considering suspension or revocation of a license under Section 490.

26 Each board shall take into account all competent evidence of rehabilitation
27 furnished by the applicant or licensee.

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

8. Section 493 of the Code 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.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

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

7 ...

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

13 ...

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

REGULATORY PROVISIONS

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

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

- (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).

1 (4) Whether the licensee has complied with all terms of parole, probation,
restitution or any other sanctions lawfully imposed against the licensee.

2 (5) Evidence, if any, of rehabilitation submitted by the licensee.

3 11. California Code of Regulations, title 16, section 1770, states:

4 For the purpose of denial, suspension, or revocation of a personal or facility
5 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
6 Professions Code, a crime or act shall be considered substantially related to the
7 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.

8 COSTS

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

15 FIRST CAUSE FOR DISCIPLINE

16 (June 12, 2017 Criminal Convictions for DUI, Battery Upon an Officer,
17 and Vandalism on September 4, 2016)

18 13. Respondent has subjected his registration to discipline under sections 490 and
19 4301(1) of the Code in that he was convicted of a crime that is substantially related to the
20 qualifications, duties, and functions of an Intern Pharmacist. The circumstances are as follows:

21 a. On June 12, 2017, in a criminal proceeding entitled *People of the State of*
22 *California v. Harvey Perez*, in Ventura County Superior Court, case number 2016032533 M A,
23 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(b),
24 driving with a blood alcohol concentration (BAC) of .08 percent or more, with the special
25 allegation that he willfully refused to submit to a chemical test, pursuant to Vehicle Code section
26 23612. Respondent was further convicted on his plea of guilty of violating Penal Code section
27 243(b), battery upon a peace officer, and Penal Code section 594(b)(2)(A), vandalism under \$400,
28 misdemeanors. In exchange for the plea, the court dismissed additional charges of driving under

1 the influence of alcohol (Veh. Code, § 23152(a)), and resisting a peace officer (Pen. Code, §
2 148(a)(1)).

3 b. As a result of the convictions, Respondent was granted formal probation for 36
4 months. Respondent was sentenced to serve 55 days in the Ventura County Jail, with pre-custody
5 credit for two days. Respondent must comply with any treatment program designated by his
6 probation officer, complete a 90-day First Conviction Driving Under the Influence Program, pay
7 fees, fines, and victim restitution, and comply with DUI probation terms.

8 c. The facts and circumstances that led to the convictions are that at approximately
9 12:42 a.m. on September 4, 2016, two California Highway Patrol (CHP) officers in a marked
10 CHP vehicle were entering southbound Interstate 101 in the vicinity of Camarillo, when they
11 observed Respondent drive past them at a high rate of speed. The CHP officers activated their
12 radar, and calculated Respondent's speed at 98 mph. Respondent accelerated to 125 mph, and
13 was observed continuously changing lanes, and cutting in and out of traffic. The CHP officers
14 were able to catch up to Respondent in slowed traffic, and conducted an enforcement stop. Upon
15 making contact with Respondent, the officers immediately detected the odor of alcohol on
16 Respondent's breath, and his movements were slow and lethargic. Respondent was directed to
17 exit his vehicle. While speaking to Respondent, the officers observed that Respondent's eyes
18 were red and watery, and his speech was slow and slurred. Respondent admitted to consuming
19 alcohol and prescription medications earlier in the day. Respondent submitted to field sobriety
20 tests that he was unable to complete as explained and demonstrated by the CHP officer.

21 Respondent provided two breath samples that were analyzed by the preliminary alcohol screening
22 device with a BAC of .15 and .148 percent, respectively. Respondent was told that he was under
23 arrest for driving under the influence. Respondent refused to follow the officer's commands to
24 turn around. When the second officer attempted to assist, Respondent began kicking at the
25 officers. Respondent was taken to the ground, but he continued kicking at the officers, and
26 clawed at the officers' hands, causing injury. A second CHP unit arrived on scene and recorded
27 the incident. The officers were able to put Respondent in leg restraints. Respondent spit at the
28 officers, and banged his head against the pavement. Respondent repeatedly threatened to hurt and

1 kill the officers. Additional officers arrived to assist. Respondent agreed to cooperate, and the
2 leg restraints were removed. Respondent was placed in the patrol vehicle, but when Respondent
3 threatened to spit vomit at the officers, he was removed, placed on the ground, and the leg
4 restraints were reapplied. Respondent was placed back into the patrol vehicle on his side.
5 Respondent began to spit at the officers, so a spit sock (hood) was placed over his head. While en
6 route to a local hospital for medical clearance, Respondent chewed a large hole in the back seat.
7 When the officer opened the rear door to assess the damage, Respondent attempted to bite the
8 officer's hand. At the hospital, Respondent refused to provide a blood sample, so a search
9 warrant was obtained to test for alcohol and drugs. The results of the blood test were positive for
10 ethyl alcohol .095 percent. Respondent was cleared at the hospital, and subsequently transported
11 to jail for booking.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol)**

14 14. Respondent has subjected his registration to disciplinary action under section 4301(h)
15 of the Code for unprofessional conduct in that on or about September 4, 2016, as described in
16 paragraph 13, above, Respondent operated a motor vehicle while impaired by alcohol, and while
17 under its influence, he caused injury to peace officers, and damage to a CHP patrol vehicle.

18 **PRAYER**

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

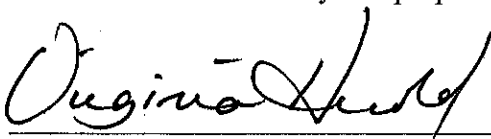
- 21 1. Revoking or suspending Intern Pharmacist Registration Number INT 38286, issued to
22 Harvey Perez
- 23 2. Ordering Harvey Perez to pay the Board of Pharmacy the reasonable costs of the
24 investigation and enforcement of this case, pursuant to Business and Professions Code section
25 125.3; and,

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

DATED: 8/14/17



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

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