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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ANTHONY ROSS HARNESS** **350 Santa Elena Street** **Palm Springs, CA 92262** Pharmacy Technician License No. 16136 Respondent.	Case No. 3235 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 14, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3235 against Anthony Ross Harness (Respondent) before the Board of Pharmacy.

2. On or about June 6, 1995, the Board of Pharmacy (Board) issued Pharmacy Technician License No. 16136 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2010, unless renewed.

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3. On or about May 26, 2009, Charlette Sheppard, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3235, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is: 350 Santa Elena Street, Palm Springs, CA 92262. A copy of the Accusation is attached as Exhibit A, and is incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c). On or about June 25, 2009, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed."

5. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. Respondent failed to file a Notice of Defense within 15 days after service upon them of the Accusation, and therefore waived their right to a hearing on the merits of Accusation No. 3235.

6. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

7. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the evidence on file herein, finds that the allegations in Accusation No. 3235 are true.

8. The total cost for investigation and enforcement in connection with the Accusation are $2,448.00 as of August 12, 2009.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Anthony Ross Harness has subjected its Pharmacy Technician License No. 16136 to discipline.

2. A copy of the Accusation is attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License based upon the following violations alleged in the Accusation:

a. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Business and Professions Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician (June 4, 1998 criminal conviction for DUI on June 3, 1998).

b. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Business and Professions Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician (September 19, 2003 criminal conviction for DUI on July 25, 2003).

c. Respondent is subject to disciplinary action under section 4301(k) of the Business and Professions Code in that Respondent was convicted of more than one misdemeanor involving the consumption of alcoholic beverages, as detailed in subparagraphs a and b, above.

d. Respondent is subject to disciplinary action under section 4301(f) of the Business and Professions Code in that Respondent committed acts of moral turpitude, dishonesty and corruption as detailed in subparagraphs a and b, above. Additional facts and circumstances are as follows:

i. On or about May 14, 2004, Respondent was arrested for violating Vehicle Code sections 23152(a) (driving a vehicle under the influence of alcohol or drugs); 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more); and 14601.2(a) (driving with a suspended or revoked license for driving under the influence of alcohol or drugs). Charges were filed against Respondent on June 11, 2004 pursuant to this arrest. Multiple arrest warrants were issued in this matter for Respondent's repeated failures to appear. Respondent pled guilty to 23152(b) on or

about September 26, 2008, and the remaining charges were subsequently dismissed. Respondent was sentenced to 180 days in jail, five years probation, payment of fines, 18-month Multiple Offender Program, and the Mothers Against Drunk Driving (MADD) Victim's Impact Panel. On or about October 27, 2008, Respondent's probation was revoked, resulting in the issuance of a warrant and placement of Respondent on "Fugitive" status with the Orange County Superior Court.

ii. On December 13, 2006, Respondent was arrested for violating Vehicle Code sections 23152(a) and (b). On February 13, 2007 and again on April 21, 2008, bench warrants were issued for Respondent's failures to appear. An additional charge of violation of Penal Code section 853.7 (failure to appear) was added. The April 21, 2008 warrant remained active at the time of the filing of the Accusation.

iii. On January 24, 2008, Respondent was arrested for violating Vehicle Code section 23152(a). On February 19, 2008 and again on April 15, 2008, bench warrants were issued for Respondent for failures to appear. On March 4, 2009, the DMV was directed to place a Failure to Appear hold on Respondent.

iv. On March 15, 2008, Respondent arrested for violating Vehicle Code sections 23152(a) and (b); and 14601.2(a). On or about April 28, 2008, an arrest warrant was issued for Respondent. The warrant remained active at the time the underlying Accusation was filed.

e. Respondent is subject to disciplinary action under section 4301(h) of the Business and Professions Code in that Respondent used alcoholic beverages to the extent or in a manner as to be dangerous of injurious to himself, to other people and to the public, and to the extent that the use impaired the ability of Respondent to conduct with safety to the public the practice authorized by his license. Specifically, Respondent has been arrested on at least six separate occasions, and convicted on at least two separate occasions, for driving under the influence of alcohol, as detailed above and in the attached Accusation.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. 16136, heretofore issued to Respondent Anthony Ross Harness, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on February 18, 2010.

It is so ORDERED January 19, 2010.

Kenneth H. Schell

KENNETH H. SCHELL, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

default decision_LIC.rtf
DOJ docket number:SD2008803080

Attachment: Exhibit A: Accusation No.3235

Exhibit A

Accusation No. 3235

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Attorneys for Complainant

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: ANTHONY ROSS HARNESS 350 Santa Elena Street Palm Springs, CA 92262 Pharmacy Technician License No. 16136 Respondent.	Case No. 3235 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 6, 1995, the Board of Pharmacy issued Pharmacy Technician Number 16136 to Anthony Ross Harness (Respondent). The Pharmacy Technician was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2010, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 477 of the Code states:

As used in this division:

(a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

(b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 482 of the Code states:

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

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

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

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

7. Section 490 of the Code states:

(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.

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(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal. App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

8. Section 492 of the Code states:

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. This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

9. 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.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

10. Section 4202(d) of the Code states that the board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

11. Section 4300 of the Code states:

(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.

12. Section 4301 of the Code states:

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, of 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, 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.

. . . .

(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.

. . . .

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

. . . .

(p) Actions or conduct that would have warranted denial of a license.

. . . .

REGULATIONS

13. 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.

14. California Code of Regulations, title 16, section 1769, subdivision b, states:

When considering the suspension or revocation of a facility or 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:

(1) The nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) Time that has elapsed since the 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.

COST RECOVERY

15. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(June 4, 1998 Criminal Conviction for DUI on June 3, 1998)

16. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as follows:

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a. On or about June 4, 1998 in a criminal proceeding entitled *People v. Harness* (Superior Court Los Angeles County (Torrance) Case No. 8SB04551), Respondent was found guilty and convicted by the Court after his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 or more, with an enhancement count that Respondent had a BAC of .20% or higher (Respondent's BAC content test showed BAC of .24%).

b. As a result of the conviction, on or about June 4, 1998, Respondent was sentenced to: 180 days of jail (suspended); three years summary probation; payment of a fine in the amount of $1,600.00; enrollment, participation in, and successful completion of a 3-month licensed first-offender alcohol and other drug education and counseling program; restrict driving for 90 days to and from work, during work, and to and from program; not operate a motor vehicle within 12 hours of having consumed any alcoholic beverages; not refuse to take a chemical/breath test for alcohol or drug consumption when requested by a peace officer; and to report any new arrests to the court within 48 hours.

c. Respondent repeatedly failed to comply with the Court's order to attend the AB541 Alcohol Program; failed to provide proof of enrollment or compliance; received notices of non-compliance from the AB541 Alcohol Program; and had multiple bench warrants issued as a result thereof. Proof of completion of the 3-month AB541 Alcohol Program was received on June 8, 2000.

SECOND CAUSE FOR DISCIPLINE

(September 19, 2003 Criminal Conviction for DUI on July 25, 2003)

17. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as follows:

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a. On or about September 19, 2003 in a criminal proceeding entitled *People v. Harness* (Superior Court Los Angeles County (Long Beach) Case No. 3LL01126), Respondent was found guilty and convicted by the Court after his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 or more. Respondent admitted to the prior conviction of June 4, 1998.

b. As a result of the conviction, on or about July 25, 2003, Respondent's sentence was suspended and he was placed on summary probation for a period of three years under the following terms: 30 days house arrest; payment of fines in the amount of $1,592.00; and enrollment, participation in, and successful completion of an 18-month licensed second-offender alcohol and other drug education and counseling program.

c. Respondent repeatedly failed to appear in Court, failed to comply with the Court's order to attend the 18-month Alcohol Program; and failed to provide proof of enrollment or compliance. Multiple bench warrants were issued and recalled as a result thereof, with the final warrant being issued in the amount of "no bail." Court documents show this case is still ongoing.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Conviction of more than one Misdemeanor involving the Consumption of Alcoholic Beverages)

18. Respondent is subject to disciplinary action under section and 4301(k) of the Code in that Respondent was convicted of more than one misdemeanor involving the consumption of alcoholic beverages. Specifically, on June 3, 1998 and again on September 19, 2003, Respondent was convicted of violating Vehicle Code section 23152(b) as detailed in paragraphs 16-17, above.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Commission of Acts of Moral Turpitude, Dishonesty and Corruption)

19. Respondent is subject to disciplinary action under section and 4301(f) of the Code in that Respondent committed acts of moral turpitude, dishonesty and corruption. The circumstances are as follows:

a. On or about June 4, 1998, Respondent was convicted of violating Vehicle Code section 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more) as detailed in paragraph 16, above.

b. On or about September 19, 2003, Respondent was convicted of violating Vehicle Code section 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more) as detailed in paragraph 17, above.

c. On or about May 14, 2004, Respondent was arrested by the Westminster Police Department for violating Vehicle Code section 23152(a) (driving a vehicle under the influence of alcohol or drugs); 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more); and Vehicle Code section 14601.2(a) (driving with a suspended or revoked license for driving under the influence of alcohol or drugs). The facts and circumstances surrounding this arrest are as follows:

i. On June 11, 2004, charges were filed against Respondent pursuant to the May 14, 2004 arrest (Case No. 04WM06036). On June 14, 2004, a warrant was ordered for Respondent's failure to appear as a result of the May 14, 2004 arrest. On July 19, 2005, the warrant was recalled and Respondent appeared in court. On September 19, 2005, a warrant was issued for Respondent's failure to appear. On December 13, 2006 the warrant was served by the Orange County Sheriff's Department. On December 27, 2006, a warrant was again issued for Respondent's failure to appear. On March 15, 2008, the warrant was served by the Orange County Sheriff' Department. On April 16, 2008, a warrant was again issued for Respondent's failure to appear. On August 29, 2008, pre-trial was set for September 26, 2008.

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ii. On or about September 26, 2008 Respondent pled guilty to 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more). Respondent pled not guilty to the remaining counts, which were subsequently dismissed. As a result of this plea, Respondent was sentenced to 180 days in jail, five (5) years probation, payment of $390.00 in fines, 18-month Multiple Offender Program, and the Mothers Against Drunk Driving (MADD) Victim's Impact Panel.

iii. On or about October 27, 2008, Respondent's probation was revoked, resulting in the issuance of a warrant and placing Respondent on "Fugitive" status with the Orange County Superior Court. Court records report this case to be ongoing.

d. On or about December 13, 2006, Respondent was arrested by the Beaumont Highway Patrol (BHP) for violating Vehicle Code section 23152(a) (driving a vehicle under the influence of alcohol or drugs) and 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more). The facts and circumstances surrounding this arrest are as follows:

i. On December 13, 2006, a BHP officer responded to a call regarding Respondent's vehicle weaving on the roadway and almost crashing several times. The officer positioned his vehicle behind Respondent's vehicle, and Respondent's vehicle immediately swerved onto the right shoulder and then changed from the #4 lane to the on-ramp lane to Desert Hills Inspection Facility. Respondent slowed his vehicle to approximately 20 miles per hour, and then swerved to the left and reentered the freeway. The officer continued to observe Respondent swerve from the #4 lane to the right shoulder, then activated his patrol vehicle's overhead lights and initiated an enforcement stop.

ii. Upon making contact with Respondent, the officer detected a strong odor of alcohol. Respondent told the officer he did not have a driver's license. Respondent admitted to consuming three beers earlier in the night. Respondent failed a series of Field Sobriety Test (FST) questions and a series of FSTs. Respondent was then arrested and booked as detailed above.

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iii. On February 13, 2007 and again on April 21, 2008, bench warrants were issued for Respondent's failure to appear at the Superior Court of Riverside County (Banning), Case No. BAM030792. An additional charge of violation of Penal Code section 853.7 (failure to appear) was added as Count 3. The April 21, 2008 warrant remains active for failure to appear on a signed promise.

e. On or about January 24, 2008, Respondent was arrested by the Palm Springs Police Department (PSPD) for violating Vehicle Code section 23152(a) (driving a vehicle under the influence of alcohol or drugs). The facts and circumstances surrounding this arrest are as follows:

i. On January 24, 2008, PSPD responded to a call about a single vehicle collision with property damage. A witness told the officers on scene that she watched Respondent drive on the sidewalk in front of a home and strike the posted stop sign. The witness further observed Respondent get out of his vehicle and stagger to the front of the vehicle, pick up his license plate and front bumper, and put them in the cargo area of his vehicle. The witness stated that Respondent then attempted to leave the scene, and she stopped him from driving away. Respondent was unable to turn off the vehicle engine or provide his identification card to the officer without assistance. The officer attempted to ask Respondent several questions for purposes of a field sobriety interview, but Respondent was so intoxicated he was unable to function, and fell asleep three times while the officer was asking him questions. Respondent had a very strong odor of alcohol on his person, and a much stronger odor of alcohol when he spoke. Respondent was unable to stand without being held up. Respondent admitted to the officer that he felt the effects of alcohol, and did not think he should be driving. Respondent asked the officer, "Can't you just handcuff me to the truck until I'm sober?"

ii. On February 19, 2008 and again on April 15, 2008, bench warrants were issued for Respondent for failure to appear at the Superior Court of Riverside County (Indio), Case No. INM185118. On March 4, 2009, the Department of Motor Vehicles (DMV) was directed to place a Failure to Appear hold on Respondent.

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f. On or about March 15, 2008, Respondent was arrested again by the Palm Springs Police Department for violating Vehicle Code section 23152(a) (driving a vehicle under the influence of alcohol or drugs); 23152(b) (driving with a blood alcohol content (BAC) of 0.08 or more); and Vehicle Code section 14601.2(a) (driving with a suspended or revoked license for driving under the influence of alcohol or drugs). The facts and circumstances surrounding this arrest are as follows:

i. On March 15, 2008, a PSPD officer was dispatched to a traffic collision involving one vehicle colliding with the side of a residence. When the officer arrived, Respondent's vehicle was parked too far inside the residence to open the driver side door. Respondent was unable to understand the officer's directions to exit through the driver door window. Respondent exited the vehicle through the passenger door. The officer detected a mild odor of alcohol coming from Respondent's breath. Respondent stated he had consumed "a beer." He also said he was taking methadone and had been for about three years. Respondent failed to satisfactorily perform the field sobriety tests. Respondent was booked into the Palm Springs jail.

ii. On or about April 24, 2008 a criminal complaint was filed against Respondent with the Superior Court of Riverside County (Indio), Case No. INM187049. On or about April 28, 2008 an arrest warrant was issued for Respondent. This warrant remains active.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Use of Alcoholic Beverages in a Dangerous Manner)

20. Respondent is subject to disciplinary action under section and 4301, subdivision (h) of the Code in that Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself, to other people and to the public, and to the extent that the use impaired the ability of Respondent to conduct with safety to the public the practice authorized by the license. Specifically, Respondent has been arrested on at least six different occasions, and convicted on at least two different occasions, for driving under the influence of alcohol, as detailed in paragraphs 16-19, above.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Number 16136, issued to Anthony Ross Harness.

2. Ordering Anthony Ross Harness to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 4/14/09

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

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