

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

In the Matter of the Accusation Against:

KERSTIN LYNN ANDERSON
La Quinta, CA

Pharmacy Technician No. TCH 2327

Respondent.

Case No. 3766

OAH No. 2010090675

DECISION

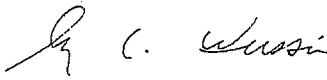
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on October 19, 2011.

It is so ORDERED September 19, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

KERSTIN LYNN ANDERSON
La Quinta, CA

Pharmacy Technician Registration No. TCH 2327

Respondent.

Case No. 3766

OAH No. 2010090675

PROPOSED DECISION

Alan R. Alvord, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on May 19, 2011, in San Diego, California.

Desiree I. Kellogg, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of California, represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Respondent, Kerstin Lynn Anderson, was self-represented and was present throughout the hearing.

The matter was submitted on May 19, 2011.

FACTUAL FINDINGS

Jurisdictional Matters

1. On August 23, 2010, complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California, signed the Accusation in Case No. 3766. The Accusation alleged that respondent's pharmacy technician registration should be disciplined because of a 2009 conviction for driving under the influence, and for the unprofessional conduct for using alcohol and drugs in a manner dangerous to herself or others.

The Accusation was served on respondent, who timely filed a notice of defense.

2. On May 17, 2011, the record in the administrative hearing was opened, documentary evidence and testimony were received, argument made, and the record was closed.

Complainant's unopposed motion to amend the accusation at the hearing was granted. Amendments to the accusation were interlineated on the document (Exhibit 1) at the hearing. The matter was submitted on May 17, 2011.

Respondent's Registration History

3. On December 2, 1992, the board issued pharmacy technician registration number TCH 2327 to Kerstin Lynn Anderson, authorizing her to act as a pharmacy technician in California. Respondent's pharmacy technician registration is in full force and effect through February 29, 2012.

4. On April 14, 2008, the board issued a Letter of Admonishment to respondent arising out of a 2007 conviction for driving under the influence of alcohol. Respondent received the letter of admonishment. The 2007 conviction was not charged in the accusation as a basis for discipline, but it was offered as evidence of aggravating factors.

The 2008 Conviction

5. On December 2, 2008, while still on probation from the 2007 conviction, respondent was arrested for driving under the influence. On July 9, 2009, in Superior Court, County of Riverside, in case no. INM194834, respondent pled guilty and was convicted of violating California Vehicle Code section 23152, subdivision (a) – driving a vehicle while under the influence of alcohol or a drug or under their combined influence, and Vehicle Code section 23152, subdivision (b) – driving a vehicle with a blood alcohol concentration of 0.15 and more, both misdemeanors.

This conviction and its underlying conduct were substantially related to the qualifications, functions and duties of a pharmacy technician.

As a result of the conviction, respondent was placed on five years' summary probation and was ordered to pay fines and penalties totaling approximately \$2,500, to serve 30 days in custody and to attend an 18-month multiple offender drinking driver program.

Respondent was unable to recall any of the facts and circumstances of the incident that led to her most recent conviction. A police incident report submitted by complainant recites the arresting officer's direct observations of respondent. Her vehicle was parked facing the wrong way on the shoulder of a divided highway. When the officer asked respondent to exit the vehicle, she was unable to do so without assistance and was unable to stand without holding on to the vehicle. The officer stated he was unable to conduct a field

sobriety test due to her inability to understand directions and the officer's belief that she would hurt herself if she attempted the test. A preliminary alcohol screening test showed a blood alcohol concentration of .303%.

Respondent's Background and Rehabilitation Evidence

6. Respondent was born in Brooklyn, New York. She attended high school in Colorado. She moved to California in 1982, and completed a high school equivalency certificate program in Riverside, California in 2004. She has been working as a pharmacy technician at JFK Memorial Hospital in Indio, California, since 2002. She worked at several other pharmacies since receiving her pharmacy technician registration in 1992.

7. Respondent could not recall any of the details of the 2008 incident that led to her arrest and conviction. She admitted mixing alcohol and Vicodin on that occasion.

Respondent testified about the circumstances of her arrest in 2007. She was at home and had been drinking some alcohol when she decided to make home-made peanut brittle. She drove to the store to get the ingredients. On her way home, she was sitting at a traffic light turn lane waiting for the red light to turn green. She was reading the recipe for peanut brittle while waiting at the light and did not realize that her vehicle was drifting forward. An officer followed her out of the intersection, stopped her vehicle, and conducted a sobriety test.

8. Respondent began a recovery program in December 2008. Her last drink was the day of her arrest, December 2, 2008. She has had no relapses. She freely admits that she is an alcoholic. She denies that she has any other substance abuse issues. She started her recovery program before being ordered to do so by the court. She entered the program on the recommendation of a pharmacist with whom she worked. She has completed all terms of the court ordered program. She continues to attend Alcoholics Anonymous meetings at least once a week. She has developed close relationships in the AA meetings and speaks to people in the program on a daily basis. She does not have a sponsor and does not sponsor others. She has been a speaker at AA meetings many times. She stated that she does not actively work the steps of AA, but she tries to be a good person, to make amends and to deal with her addiction one day at a time. She believes that her regular contact with others in the AA program provides strong support and accountability in her recovery.

9. Respondent offered several letters of support from supervisors and co-workers. The letters supplement and explain respondent's testimony that she is a hard-working pharmacy technician with a good attitude. Others describe her as hard-working, conscientious, reliable, honest, trustworthy, pleasant and committed to patient care. There is no evidence that respondent was ever under the influence at work.

10. Respondent's demeanor during her testimony at the hearing was impressive. She was remorseful and contrite. She took responsibility for her actions. She answered difficult questions in a straightforward manner and was forthcoming without hesitation when the questions called for her to provide information against her own interest.

Disciplinary Guidelines

11. The board has enacted guidelines¹ to be followed in disciplinary actions:

(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).

(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.

Evaluation

12. Respondent has two criminal convictions involving the abuse of alcohol. The first conviction led the board to issue a warning to respondent. She failed to heed the warning and she was convicted of driving under the influence – mixing a drug and alcohol – a short time later. However, the most recent conviction has prompted a change in respondent's attitude. She immediately entered a program of recovery. Although she does not follow all of the teachings of the Alcoholics Anonymous recovery program, she uses the program as a resource to develop a support network and keeps contact with that network through regular meeting attendance and daily contact. She has worked very hard and has maintained a strong recovery.

13. Respondent's recovery, however, is still relatively new. Although she has many of the factors in place that suggest she has a strong and lasting recovery, she has not yet established a long track record of sobriety.

¹ California Code of Regulations, title 16, section 1769.

14. Under the circumstances of this case, revocation of respondent's registration is not the appropriate disciplinary measure. Revocation would only serve to punish respondent and would not lead to additional public protection. Similarly, actual suspension of respondent's registration would only serve to punish respondent and offer no public protection benefit.

A period of probation is necessary to provide public protection and to create additional incentives to respondent to maintain her sobriety.

Costs of Investigation and Enforcement

15. A certification of prosecution costs was submitted by the deputy attorney general. It states that the Department of Justice has billed complainant \$4,485.00 for the investigation and prosecution of this matter. The deputy attorney general who presented the case was well prepared and efficient. A review of the detailed time report submitted with the cost declaration does not reveal any unusual or excessive activities. The hourly rates for the professionals and paraprofessionals working on the case were reasonable.

Total enforcement and investigation costs of \$4,485.00 are reasonable under the circumstances. No evidence established any basis to reduce the costs under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 authorizes the board to discipline a pharmacy technician registration 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. Section 493 provides that the term "license" include a "registration." Business and Professions Code section 4301 authorizes the board to take action against any holder of a license guilty of unprofessional conduct. Section 4301, subdivision (h), defines unprofessional conduct to include administering to oneself any dangerous drug or alcoholic beverage to the extent or in a manner as to be dangerous or injurious to oneself or to any other person or to the public.

Cause Exists to Impose Administrative Discipline

2. Cause exists to impose discipline against respondent's registration under Business and Professions Code section 4031, subdivision (h), in that respondent used a dangerous drug and alcoholic beverage to the extent or in a manner as to be dangerous to respondent and to the public.

The Appropriate Measure of Discipline

3. The Board's disciplinary guidelines were applied in this matter. In light of respondent's evidence of a strong recovery program and rehabilitation, the appropriate discipline is probation.

Recovery of Costs of Investigation and Enforcement

4. Business and Professions Code section 125.3 authorizes the recovery of reasonable costs of investigation and prosecution.

Under all the circumstances, cause exists under Business and Professions Code section 125.3 to direct respondent to pay \$4,485.00 to the Board of Pharmacy for its reasonable costs of investigation and enforcement.

ORDERS

1. Pharmacy technician registration number TCH 2327 issued to respondent, Kerstin Lynn Anderson, is revoked. However, the revocation is stayed and respondent is placed on probation for three years from the effective date of this decision on the following terms and conditions.

2. Reimbursement of Costs. Respondent, Kerstin Lynn Anderson, is directed to pay to the Board of Pharmacy \$4,485.00 in accordance with the terms set forth in Condition 8 herein.

3. Obey All Laws. Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

4. Report to the Board. Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

5. Interview with the Board. Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

6. Cooperate with Board Staff. Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

7. Notice to Employers. During the period of probation, respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in this case in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that she has read the decision in this case and the terms and conditions imposed thereby. It shall be respondent's

responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

“Employment” within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

8. Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$4,485.00. Respondent and the board may agree to repayment terms. Upon acceptance of repayment terms by the board, there shall be no deviation from the agreed repayment schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board its costs of investigation and prosecution.

9. Probation Monitoring Costs. Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

10. Status of Registration. Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

11. License Surrender While on Probation/Suspension. Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician registration to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it

deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician registration to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

12. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

13. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 20 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

“Cessation of work” means calendar month during which respondent is not working for at least 20 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. “Resumption of work” means any calendar month during which respondent is working as a pharmacy technician for at least 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

14. Violation of Probation. If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

15. Completion of Probation. Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

16. No Ownership of Licensed Premises. Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective of this decision. Violation of this restriction shall be considered a violation of probation.

17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups. Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

18. Random Drug Screening. Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

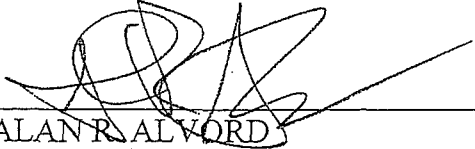
Failure to comply with this suspension shall be considered a violation of probation.

19. Work Site Monitor. Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, she shall notify the board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

20. Notification of Departure. Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

21. Abstain from Drugs and Alcohol Use. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: June 9, 2011


ALAN R. ALVORD
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2996
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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. 3766

12 **KERSTIN LYNN ANDERSON**
13 **53380 Avenida Herrera**
14 **La Quinta, CA 92253**

ACCUSATION

15 **Pharmacy Technician Registration**
16 **No. TCH 2327**

17 Respondent.

18
19
20 Complainant alleges:

21 **PARTIES**

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

24 2. On or about December 2, 1992, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 2327 to Kerstin Lynn Anderson (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought
27 herein and will expire on February 29, 2012, unless renewed.

1 and the board may inquire into the circumstances surrounding the commission of
2 the crime in order to fix the degree of discipline or to determine if the conviction is
3 substantially related to the qualifications, functions, and duties of the licensee in
4 question.

5 As used in this section, "license" includes "certificate," "permit,"
6 "authority," and "registration."

7 9. Section 4301 of the Code states:

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

12

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

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of
22 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction
26 shall be conclusive evidence only of the fact that the conviction occurred. The
27 board may inquire into the circumstances surrounding the commission of the
28 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. 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.

. . . .

10. California Code of Regulations, title 16, section 1769, 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).
- (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.

COST RECOVERY

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.

FIRST CAUSE FOR DISCIPLINE

(July 27, 2009 Conviction for DUI on December 2, 2008)

13. Respondent is subject to disciplinary action under sections 490 and 4301(1) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about July 27, 2009, in a criminal proceeding entitled *The People of the State of California v. Kerstin Lynn Anderson*, in Riverside County Superior Court case number

1 INM194834, Respondent was convicted on her plea of guilty for violating Vehicle Code section
2 23152(a), driving under the influence of alcohol and Vehicle Code section 23152(b), driving with
3 a blood alcohol content of .08 or more, with an enhancement of Vehicle Code section 23578,
4 blood alcohol concentration of 0.15 and more, by weight, misdemeanors.

5 b. As a result of her conviction, Respondent was placed on summary probation for a
6 period of 5 years, ordered to serve 30 days in jail, obey all laws, pay all applicable fees, fines and
7 restitution, attend and complete a drinking driver program and attend and complete a Sheriff's
8 labor program.

9 c. The facts that led to the conviction were that on or about December 2, 2008, the
10 Sheriff's Department responded to a call that Respondent's car was stopped in the southbound
11 lanes of PGA Blvd. and Avenue 54 facing north, in the Palm Springs, California area. When the
12 sheriff deputy approached Respondent in her vehicle, he noticed the odor of an alcoholic
13 beverage emanating from her. He further noticed that she had bloodshot eyes, slurred speech and
14 appeared "extremely confused" as she did not know where she was and she kept closing her eyes
15 and attempting to fall asleep. She could not exit her vehicle without assistance and was unable to
16 stand alone. Respondent admitted to the sheriff deputy that she had drank 2 shots of Brandy at
17 approximately 2:40 p.m. that day and that she had taken two Vicodin pills as well. At 1946
18 hours, Respondent registered a .303% on the P.A.S. device and a .285% at 1952.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct – Use of Alcohol in a Manner Dangerous to Self or Others)**

21 14. Respondent is subject to disciplinary action under section 4301(h) of the Code for
22 unprofessional conduct in that Respondent used alcohol to an extent in a manner dangerous to
23 herself or others, as is set forth above in paragraph 13, which is incorporated herein by reference
24 as though fully set forth herein.

