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

In the Matter of the Accusation Against: **STEVE HERRERA** **338 Conlon Avenue** **La Puente, CA 91744** **Pharmacy Technician License No.** **TCH 68927** Respondent.	Case No. 3926

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 25, 2012.

It is so ORDERED on April 25, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2114
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **STEVE HERRERA** **338 Conlon Avenue** **La Puente, CA 91744** **Pharmacy Technician License No. TCH 68927** Respondent.	Case No. 3926 OAH No. L-2011080963 **STIPULATED SURRENDER OF LICENSE AND ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by William D. Gardner, Deputy Attorney General.

2. Steve Herrera (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about July 10, 2006, the Board of Pharmacy issued Pharmacy Technician License No. TCH 68927 to Steve Herrera (Respondent). The Pharmacy Technician License was

///

in full force and effect at all times relevant to the charges brought in Accusation No. 3926 and will expire on July 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3926 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 9, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3926 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3926. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3926, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician License No. TCH 68927 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician License without further process.

///

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician License No. TCH 68927, issued to Respondent Steve Herrera, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.

2. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. Respondent understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure.

5. Respondent may not apply for any license, permit, or registration from the Board for three (3) years from the effective date of this decision. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, all allegations set forth in the accusation shall be deemed to be true, correct and admitted by respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.

6. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this decision, investigation and prosecution costs in the amount of $2,562.00 shall be paid to the Board prior to issuance of the license.

7. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3926 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

///

///

///

///

///

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 2/28/12

STEVE HERRERA
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 3/5/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

WILLIAM D. GARDNER
Deputy Attorney General
Attorneys for Complainant

LA2011600159
60725583.doc

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2114
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **STEVE HERRERA** **338 Conlon Avenue** **La Puente, CA 91744** **Pharmacy Technician License No. TCH 68927** Respondent.	Case No. 3926 OAH No. L-2011080963 **FIRST AMENDED 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 July 10, 2006, the Board of Pharmacy issued Pharmacy Technician License Number TCH 68927 to Steve Herrera (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2012, 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 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.

5. Section 4300 of the Code states, in pertinent part:

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

. . . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

6. Section 4301 of the Code states, in pertinent part:

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

. . . .

"(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. 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.

. . . .

7. 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."

OTHER RELEVANT STATUTES AND LAWS

8. California Penal Code section 243, subdivision (b), states, in pertinent part:

"When a battery is committed against the person of a peace officer . . . engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer

while also employed in a private capacity as a part-time or casual private security guard or patrolman . . . and the person committing the offense knows or reasonably should know that the victim is a peace officer . . . the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment."

9. California Penal Code section 148, subdivision (a), states:

"Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

10. California Vehicle Code section 20002 states, in pertinent part:

(a) The driver of any vehicle involved in an accident resulting only in damage to any property, including vehicles, shall immediately stop the vehicle at the nearest location that will not impede traffic or otherwise jeopardize the safety of other motorists. . . .

(c) Any person failing to comply with all the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine.

11. California Vehicle Code section 23152, subdivision (b), states:

"It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath."

12. California Vehicle Code section 23550 states:

(a) If a person is convicted of a violation of Section 23152 and the offense occurred within 10 years of three or more separate violations of Section 23103, as specified in Section 23103.5, or

Section 23152 or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for not less than 180 days nor more than one year, and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles pursuant to paragraph (7) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) A person convicted of a violation of Section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to the conviction. The person shall be advised of this designation pursuant to subdivision (b) of Section 13350.

13. Los Angeles County Code section 13.18.010 states:

"Every person who consumes any beer, wine or other intoxicating beverage on any public street, sidewalk, alley, highway or parking lot open to the public is guilty of a misdemeanor. This section shall not be deemed to proscribe any act which is positively permitted or prohibited by any law of the state of California."

COST RECOVERY

14. 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

(Unprofessional Conduct - Criminal Conviction)

15. Respondent is subject to disciplinary action under section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as follows:

///

a. On or about May 25, 2005, in the criminal matter entitled *The People of the State of California v. Steve Herrera* (Super. Ct. Los Angeles, 2005, No. 5WH02594), Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a greater than 0.08% blood alcohol] and one misdemeanor count of violating Penal Code section 148(a) [resisting arrest]. Respondent was fined and placed on probation for a period of three (3) years. Respondent disclosed this conviction on his application for licensure, and following an investigation into the matter, the Board issued Pharmacy Technician License Number TCH 68927 to Steve Herrera on or about July 10, 2006. Since that time, Respondent has been convicted of additional crimes on multiple occasions.

b. On or about October 17, 2008, Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of violating Penal Code section 243(b) [battery against a peace officer] in the criminal proceeding entitled *The People of the State of California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB05013). Respondent was placed on probation for a period of 3 years, sentenced to 2 days in jail and 28 days of community service, and ordered to attend anger management classes.

c. The circumstances underlying the conviction are that on or about May 24, 2008, the Los Angeles County Sheriff's Department responded to a domestic disturbance call involving an intoxicated individual who was reportedly throwing bricks and attempting to enter a residence in Hacienda Heights, California, without permission. Once on the scene, the deputies encountered Respondent, dressed only in his underwear and tennis shoes, kicking at the front door of the residence. As one of the deputies approached Respondent, Respondent charged the deputy and attempted to punch him in the head. The deputy was able to subdue Respondent, whereupon he was arrested and charged with assault and battery.

d. On or about November 25, 2008, Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8JB09380). Respondent

///

was placed on probation for a period of 3 years, sentenced to 4 days in jail, and ordered to attend an 18-month second offender alcohol program.

e. The circumstances underlying the conviction are that on or about October 3, 2008, an officer of the West Covina Police Department stopped Respondent after observing him speeding and weaving in and out of traffic lanes. While questioning Respondent, the arresting officer observed that Respondent smelled of alcohol, had slurred speech, bloodshot eyes and was unsteady on his feet. Respondent was then asked to perform a series of field sobriety tests, which he failed. Respondent also provided two breath samples to an alcohol screening device which registered Respondent's blood alcohol content at .12.

f. On or about March 16, 2009, Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of violating Vehicle Code section 23152(b) [drive with a greater than 0.08% blood alcohol] in the criminal proceeding entitled *The People of the State of California v. Steve Herrera* (Super. Ct. Los Angeles County, 2008, No. 8RI06642). Respondent was placed on probation for a period of 4 years, sentenced to 4 days in jail, and ordered to attend an 18-month alcohol offender program.

g. The circumstances underlying the conviction are that on or about October 18, 2008, the Los Angeles County Sheriff's Department responded to a call regarding a possible drunk driver on Sunset Avenue in La Puente, California. Once on the scene, the deputy contacted a witness who informed him that the suspected drunk driver had driven off road, abandoned his vehicle and fled the scene. The deputy then observed a man (Respondent) staggering down the street with his shirt off. While questioning Respondent, the arresting officer observed that Respondent smelled strongly of alcohol, had watery, bloodshot eyes, and was unsteady on his feet. Respondent admitted that he had been drinking and that he was the driver of the vehicle in question. Respondent also provided a breath sample to an alcohol screening device which registered Respondent's blood alcohol content at .28.

h. On or about February 8, 2010, Respondent entered a plea of nolo contendere and was convicted of one misdemeanor count of violating Los Angeles County Code section 13.18.010 [consuming alcohol in public place] in the criminal proceeding entitled *The People of the State of*

California v. Steve Herrera (Super. Ct. Los Angeles County, 2009, No. 9BF03310). Respondent was ordered to serve 3 days in jail.

i. The circumstances underlying the conviction are that on or about June 11, 2009, a Los Angeles Sheriff's Department deputy observed Respondent drinking beer from a 40 oz. bottle in the parking lot of a Norwalk, California, convenience store.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Dangerous Use of Alcohol)

16. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that Respondent has used alcoholic beverages to the extent and/or in a manner as to be dangerous or injurious to himself and the public. The circumstances are that on January 26, 2012, Respondent was arrested by Los Angeles County Sheriff's deputies for violating Vehicle Code section 23550(a) [DUI – Habitual Offender] and Vehicle Code section 20002(a) [Hit and Run]. Respondent was arrested after he attempted to flee the scene following a collision with two parked vehicles. The sheriff's deputies determined that Respondent was under the influence of alcohol based on his incoherence, inability to attempt a sobriety test, inability to stand without assistance, strong smell of alcohol and intermittent loss of consciousness. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, subdivisions a through i, inclusive, as though set forth fully herein.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct -- Multiple Misdemeanors Involving Alcohol)

17. Respondent is subject to disciplinary action under section 4301, subdivision (k), in that Respondent has been convicted of more than one misdemeanor involving the use of alcoholic beverages. Complainant refers to and by this reference incorporates the allegations set forth above in paragraph 15, subdivisions a through i, inclusive, as though set forth fully herein.

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 License Number TCH 68927, issued to Steve Herrera;

2. Ordering Steve Herrera 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: 2/17/12

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

LA2011600159
60712982.doc