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

In the Matter of the Accusation Against: **MARY PAT HIGLEY** 38 Lyndhurst Newport Beach, CA 92660 **Pharmacist License No. RPH 37064** Respondent.	Case No. 4174

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 4, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STANLEY C. WEISSER
Board President

KAMALA D. HARRIS
Attorney General of California
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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: **MARY PAT HIGLEY** **38 Lyndhurst** **Newport Beach, CA 92660** **Pharmacist License No. RPH 37064** Respondent.	Case No. 4174 **STIPULATED SURRENDER OF LICENSE AND ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Surrender and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

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 James M. Ledakis, Supervising Deputy Attorney General.

2. Mary Pat Higley (Respondent) is represented in this proceeding by attorney Adam Stull, Esq. whose address is Law Offices of Stull & Stull 15615 Alton Parkway, Suite 450 Irvine, CA 92618.

3. On or about December 4, 1981, the Board of Pharmacy issued Pharmacist License No. RPH 37064 to Mary Pat Higley. The Pharmacist License was in full force and effect at all times relevant to the charges brought in Accusation No. 4174 and will expire on September 10, 2012, unless renewed.

JURISDICTION

4. Accusation No. 4174 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 January 11, 2012. Respondent timely filed her Notice of Defense contesting the Accusation.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 4174. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of her 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 her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her 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. 4174, agrees that cause exists for discipline and hereby surrenders her Pharmacist License No. RPH 37064 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation she enables the Board to issue an order accepting the surrender of her Pharmacist License without further process.

RESERVATION

10. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. 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 or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her 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.

12. 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.

13. 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.

14. 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 Pharmacist License No. RPH 37064, issued to Respondent Mary Pat Higley, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacist 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 Pharmacist in California as of the effective date of the Board's Decision and Order.

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

4. If she ever applies for licensure or petitions for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for licensure in effect at the time the application or petition is filed, and all of the charges and allegations contained in Accusation No. 4174 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application or petition. Respondent may reapply for licensure three years after the effective date of the Board's decision.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of $1,200.00 prior to issuance of a new or reinstated license.

6. 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. 4174 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 above Stipulated Surrender of License and Order and have fully discussed it with my attorney, Adam Stull. I understand the stipulation and the effect it will have

on my Pharmacist 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: 13 - Febr - 2012

MARY PAT HIGLEY
Respondent

I have read and fully discussed with Respondent Mary Pat Higley the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: 2-15-2012

ADAM STULL
Attorney for 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:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General

JAMES M. LEDAKIS
Supervising Deputy Attorney General
Attorneys for Complainant

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on my Pharmacist 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: _____

MARY PAT HIGLEY
Respondent

I have read and fully discussed with Respondent Mary Pat Higley the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED: _____

ADAM STULL
Attorney for 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:

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ALFREDO TERRAZAS
Senior Assistant Attorney General

JAMES M. LEDAKIS
Supervising Deputy Attorney General
Attorneys for Complainant

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Stipulation.rtf

Exhibit A

Accusation No. 4174

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

In the Matter of the Accusation Against: **MARY PAT HIGLEY** **38 Lyndhurst** **Newport Beach, CA 92660** **Pharmacist License No. RPH 37064** **Respondent.**	Case No. 4174 **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 December 4, 1981, the Board of Pharmacy issued Pharmacist License No. RPH 37064 to Mary Pat Higley (Respondent). The Pharmacist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2012, unless renewed.

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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, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 provides, in pertinent part, that when considering the 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 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
>
> As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. 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:

. . . .

(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.

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REGULATORY PROVISIONS

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 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.

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FIRST CAUSE FOR DISCIPLINE

(June 13, 2011 Criminal Conviction for Driving Under the Influence of Alcohol With a Blood Alcohol Content of 0.08% or More [BAC 0.20% on December 24, 2010)

13. Respondent has subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

14. On or about June 13, 2011, in a criminal proceeding entitled *People of the State of California v. Mary Pat Higley*, in the Orange County Superior Court, Harbor Justice Center, Newport Beach Facility, in Case No. 11HM02706 M A, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152(b) (driving under the influence of alcohol with a blood alcohol content of 0.08% or more [BAC .20%]), a misdemeanor. As a result of Respondent's plea, the Court dismissed a charge that had originally been filed for violation of Vehicle Code sections 23152(a) (driving under the influence of alcohol).

15. The circumstances surrounding the conviction are that on or about December 24, 2010, at approximately 1040 hours, Newport Beach Police Department officers responded to the area of Lyndhurst and Montgomery in the City of Newport Beach, CA, regarding a female driver that was reportedly swerving all over the road and possibly collided with other vehicles. Upon arrival, officers observed a tan Lexus, CA License No. 5X0J234, partially parked on the sidewalk on the northwest corner of Lyndhurst and Montgomery. The vehicle was blocking traffic causing it to be a hazard in the roadway.

16. Officers approached the vehicle and observed the driver's side door open. The vehicle was not running, however, the keys were still in the ignition. Officers observed a female subject, later identified as Respondent, seated in the driver's seat. Officers asked Respondent what had occurred, and Respondent mumbled several unintelligible words and appeared to be extremely lethargic and confused. Officers asked Respondent if she was driving the vehicle and Respondent stated, "Yes, can I just go home?" Officers detected a strong odor of an alcoholic beverage emanating from Respondent's breath and person. Officers requested that Respondent step out of her vehicle in order to conduct an investigation of possible drunk driving and

Respondent was unable to get out of the vehicle. Two officers had to assist in removing Respondent from the driver's seat of her vehicle. Respondent was unable to stand on her own and was extremely unsteady, even with the officers' assistance. Officers noticed that Respondent had red, watery eyes and a slurred speech. Officers asked Respondent if they could conduct a pat-down search of her person for any weapons, and Respondent agreed. Officers located a wine bottle opener with a cork still attached in the right front pocket of Respondent's jacket. Officers instructed Respondent to sit on the curb. Respondent was unable to maintain her balance while sitting on the curb and officers had to assist her in holding her up. Because of Respondent's level of intoxication, and for her own safety, officers did not have Respondent submit to a field sobriety test.

17. While still at the scene, Officers contacted Respondent's husband, T.B., who was standing near Respondent's vehicle. Officers asked T.B. what had occurred, and T.B. told officers that he is married to Respondent and that the two of them resided at 38 Lyndhurst, Newport Beach, CA. T.B told officers that Respondent was visiting her mother in the City of Costa Mesa, and that Respondent contacted T.B. by phone to inform him that she and her mother had gotten into a "huge argument." T.B. became concerned for Respondent and drove to Respondent's mother's house in Costa Mesa, arriving at approximately 1000 hours. T.B. told officers that Respondent was "fine" and "coherent" when he arrived at Respondent's mother's house. T.B. convinced Respondent to go home and the two left with T.B. following Respondent to their residence in Newport Beach. Officers asked T.B. if he had seen Respondent drinking that evening, and T.B. stated, "No." Officers asked T.B. if he thought Respondent might have consumed alcoholic beverages, and T.B. responded, "I anticipate she was drinking." T.B. told officers that Respondent was driving eastbound on Bonita Canyon Road and reached Mesa View Drive, and that Respondent entered the left turn lane with a red light but stopped her vehicle in the crosswalk. T.B. told officers that he became concerned that Respondent might drive into the intersection, so he exited his vehicle and knocked on Respondent's window to advise Respondent that she had passed the limit line and needed to back up. The light then phased to green and both Respondent and T.B. turned into the complex, and Respondent continued to drive down Mesa

View Drive and that Respondent's vehicle "just ended up on the sidewalk." T.B. told officers that Respondent had a prior arrest for driving under the influence of alcohol in February of 2008.

18. Officers contacted witness D.B., who advised officers that he was driving eastbound on Bonita Canyon Drive and entered the left turn lane at Mesa View Drive, when he observed T.B. exit his vehicle at the red light and approach Respondent's vehicle. D.B. stated that the two exchanged words and then drove into the complex. D.B. told officers that Respondent was driving "all over the road" and that he became concerned for everyone's safety and contacted police.

19. While Respondent was still seated on the curb, officers asked Respondent if she had her driver's license in her vehicle, and she stated she did. Officers asked Respondent if they could retrieve her driver's license from her vehicle, and Respondent stated her driver's license was in her purse inside the vehicle. As officers looked through Respondent's vehicle for Respondent's purse, they located an unsealed bottle of Smirnoff cranberry vodka on the rear passenger floor board. Officers also located a water bottle that was half full in the front cup holder. Officers removed the lid to the bottle and smelled a strong odor of alcohol coming from inside the bottle. Officers were not able to locate Respondent's purse.

20. Officers formed the opinion that Respondent was under the influence of an alcoholic beverage and Respondent was placed under arrest for driving under the influence of alcohol. Officers recovered the wine bottle opener, the bottle of Smirnoff vodka and the water bottle containing alcohol and booked the evidence into the Newport Beach Police Department property as evidence. Because of the location where Respondent's vehicle was located on the sidewalk, the symptoms of alcohol intoxication Respondent exhibited, the evidence found in Respondent's vehicle, and all parties' statements, officers formed the opinion that Respondent drove her vehicle while under the influence of alcohol. Officers provided Respondent's husband, T.B., with the keys to the vehicle and released the vehicle to him.

21. Officers advised Respondent of her chemical rights, and Respondent was unable to answer officers' questions. Respondent was transported to Hoag Hospital for medical clearance. Officers once again advised Respondent of her chemical rights and Respondent agreed to submit

to a blood test. A blood sample was taken and forwarded to the Orange County Sheriff's Office for toxicological testing purposes. Respondent was medically cleared at Hoag Hospital and subsequently transported to and booked at the Newport Beach Police Department jail.

22. As a result of the conviction Respondent was placed on three (3) years informal probation and ordered to serve 60 days in the Orange County Jail with two days credit for time served, violate no laws, pay various fines and fees, not drive a motor vehicle with a measurable amount of alcohol or drugs in blood, submit to a chemical test of blood, breath or urine on demand of any peace officer or probation officer, not drive without proof of valid auto liability insurance or financial responsibility as required by law, use true name and date of birth at all times, and to disclose the terms and conditions of probation when asked by any law enforcement or probation officer. The Court also ordered Respondent to attend and complete an 18-month Multiple Offender Alcohol Program, attend and complete five self-help meetings such as Alcoholics Anonymous meetings in lieu of MADD victim panel, and to wear an Alcohol Monitoring Device from home confinement if placed on home confinement.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol in a Manner Dangerous and Injurious to Oneself, to Any Other Person Or to the Public)

23. Respondent has subjected her license to disciplinary action under section 4301, subdivision (h), of the Code in that on or about February 15, 2008, and December 24, 2010, Respondent drove a vehicle with a blood alcohol content of 0.26% and 0.20%, respectively, which posed a serious risk of injury and/or death to herself, to any other person or to the public and to the public, as detailed in paragraphs 13-22, above, and 25-35, below, which are incorporated here by reference.

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THIRD CAUSE FOR DISCIPLINE

(Multiple Convictions Involving the Use of Alcoholic Beverages)

24. Respondent has subjected her license to disciplinary action under section 4301, subdivision (k), of the Code in that on or about February 15, 2008 and December 24, 2010, Respondent was convicted in two separate cases on charges involving the consumption of alcoholic beverages, as detailed in paragraphs 19 and 28, above, and 31-41, below, which are incorporated here by reference.

DISCIPLINARY CONSIDERATIONS

25. To determine the degree if discipline, if any, to be imposed on Respondent for the violations alleged above, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

26. On or about September 22, 2009, in the matter entitled "*In the Matter of the Citation Against Mary Pat Higley,*" the Board of Pharmacy issued Citation No. CI 2007 37082 to Respondent pursuant to Code section 125.9 and California Code of Regulations, title 16, section 1775, et seq., for violation of Business and Professions Code section 4301, subdivisions (h) and (l) (Unprofessional Conduct – Administering to oneself alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself or to any other person or to the public and Conviction of a Crime Substantially Related to the Qualifications, Functions and Duties of a Pharmacist, respectively).

27. The circumstances are that on February 15, 2008, at approximately 1648 hours, Costa Mesa Police Department officers responded to a call regarding a possible drunk driver being followed in the area of Harbor Boulevard and Adams Avenue in the City of Costa Mesa, CA. Witnesses informed dispatch that the vehicle drove eastbound on Adams Avenue and struck the curb several times, then drove up onto the sidewalk at Fairview Road and Adams Avenue, and continued eastbound on El Camino Drive running several stop signs. The vehicle stopped at LaSalle Avenue and Sonora Road. One of the witnesses that was following the vehicle walked up to the vehicle and took the keys out of the ignition and reported to dispatch that a child was observed in the back seat of the vehicle.

28. When officers arrived at the scene, they observed the driver of the vehicle, identified as Respondent, seated on the curb at the rear of the vehicle. Officers talked to Respondent to find out what had happened. Respondent told officers she was going home. Officers asked Respondent where she was and she told officers she thought she was on Irvine Avenue. Officers could see that Respondent's eyes were red and watery and that her face was flushed. Officers smelled the strong odor of an alcoholic beverage on Respondent's breath as she spoke to them.

29. While Respondent was still seated on the curb, officers performed a horizontal gaze nystagmus (HHN) and a vertical gaze nystagmus (VGN). Respondent's eyes remained fixed straight ahead and her eyes did not follow the stimulus. Officers asked Respondent to stand up and Respondent started to stand up and fell back to the seated position. Respondent was unable to stand on her own without support. Since Respondent was unable to maintain her own balance, and for her safety, officers did not administer the walk and turn or one leg stand field sobriety tests. Respondent was unable to perform these tests due to her intoxication.

30. Respondent agreed to take a breathalizer test and blew 0.24% at 1716 hours and a 0.22% at 1719 hours. After the second test, officers realized that the tests were lacking the 0.02 BAC agreement required for the test to be valid. A third test was needed, however, the third test was not completed and the test was void. At the time officers discovered the test was void, they had already placed Respondent under arrest for driving under the influence of alcohol and for child endangerment. Respondent was transported to the Costa Mesa Police Department for booking and for a blood test. A blood technician arrived and took a blood sample from Respondent's right arm at 1803 hours. The blood sample was placed into Vial #531384. Respondent's blood alcohol content was determined to be 0.26% BAC. Respondent was later booked at the Orange County Jail.

31. Officers that remained on the scene spoke to witnesses who saw Respondent driving. The first witness, T.O., saw Respondent driving northbound on Harbor Boulevard and make a right hand turn into the oncoming lanes of westbound Adams Avenue. Respondent's vehicle then stopped, backed up, and turned into the eastbound Adams Avenue lanes and drove eastbound. T.O. followed Respondent's vehicle and watched as it collided with the curb several

times on Adams Avenue between Harbor and Fairview Roads. The vehicle continued eastbound across Fairview Road and drove up onto the sidewalk and curb at Fairview Road and El Camino Drive almost striking several pedestrians. The vehicle continued eastbound on El Camino Drive and ran one of the stop signs. The vehicle turned left onto LaSalle Avenue at El Camino Drive and pulled over towards the curb in a red zone. T.O. got out of the car and walked up to the driver's window of the vehicle that she was following. T.O. positively identified Respondent as the person driving the vehicle she was following. T.O. removed the keys from the ignition and saw that there was a small child in the back seat of the vehicle.

32. Witness A.V. told officers similar sequence of events as that of witness T.O., adding that Respondent ran several stop signs, almost struck several vehicles, and almost struck pedestrians several times on Adams Avenue when Respondent's vehicle hit the curb three or four times. Witness A.V. positively identified Respondent as the person driving the vehicle. Witness A.V. requested prosecution of Respondent and signed the Citizen's Arrest form.

33. The child in the back seat of Respondent's vehicle was identified as Respondent's ten-year-old daughter, A.B. A.B. told officer she was going home after school at Christ Lutheran School. A.B. was released to her father, T.B., at the scene. T.B. moved Respondent's vehicle from the red curb and later drove it from the scene.

34. On February 16, 2008, Costa Mesa Police Department personnel contacted Social Services and provided Social Services with a verbal report of Respondent's arrest the previous day.

35. The above arrest resulted in a conviction as follows: On or about April 14, 2008, in a criminal proceeding entitled *People of the State of California v. Mary Pat Higley*, in the Orange County Superior Court, Harbor Justice Center, Newport Beach Facility, in Case No. 08HM01688 M A, Respondent was convicted on her plea of guilty to violating Penal Code section 273a(b) (child abuse and endangerment) and Vehicle Code section 23152(a) (driving under the influence of alcohol), misdemeanors. As a result of Respondent's plea, the Court dismissed a charge that had originally been filed for violation of Vehicle Code section 23152(b) (driving under the influence of alcohol with a blood alcohol content of 0.08% or more).

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 Original Pharmacist License Number 37064, issued to Mary Pat Higley;

2. Ordering Mary Pat Higley 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: 1/2/12

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

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