

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

In the Matter of the Accusation Against:

**MELISSA JIN KOGER
45 Donovan
Irvine, CA 92620
Intern Pharmacist License No. INT 28760**

Respondent.

Case No. 5684

OAH NO. 2016030702


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 at 5:00 p.m. on October 14, 2016.

It is so ORDERED on September 14, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

11 In the Matter of the First Amended Accusation	Case No. 5684
12 Against:	
13 MELISSA JIN KOGER	OAH No. 2016030702
14 45 Donovan	
15 Irvine, CA 92620	STIPULATED SURRENDER OF
Intern Pharmacist License No. INT 28760	LICENSE AND ORDER
16 Respondent.	

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:
19

20 PARTIES

- 21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Manuel Arambula, Deputy Attorney
24 General.
- 25 2. Melissa Jin Koger (Respondent) is representing herself in this proceeding and has
26 chosen not to exercise her right to be represented by counsel.
- 27 3. On or about October 21, 2011, the Board of Pharmacy issued Intern Pharmacist
28 License No. INT 28760 to Respondent. The Intern Pharmacist License was in full force and effect

1 at all times relevant to the charges brought in First Amended Accusation No. 5684 and expired on
2 May 31, 2016, and has not been renewed.

3 JURISDICTION

4 4. First Amended Accusation No. 5684 was filed before the Board of Pharmacy (Board)
5 and is currently pending against Respondent. The First Amended Accusation and all other
6 statutorily required documents were properly served on Respondent on July 14, 2016. Respondent
7 timely filed her Notice of Defense contesting the Accusation. A copy of the First Amended
8 Accusation No. 5684 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read and understands the charges and allegations in the First
11 Amended Accusation No. 5684. Respondent also has carefully read and understands the effects of
12 this Stipulated Surrender of License and Order.

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

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

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in the First
24 Amended Accusation No. 5684, agrees that cause exists for discipline and hereby surrenders her
25 Intern Pharmacist License No. INT 28760 for the Board's formal acceptance.

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

28 ≡

1 CONTINGENCY

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

11 11. The parties understand and agree that Portable Document Format (PDF) and facsimile
12 copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures
13 thereto, shall have the same force and effect as the originals.

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

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

22 ORDER

23 IT IS HEREBY ORDERED that Intern Pharmacist License No. INT 28760, issued to
24 Respondent Melissa Jin Koger, is surrendered and accepted by the Board of Pharmacy.

25 1. The surrender of Respondent's Intern Pharmacist License and the acceptance of the
26 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
27 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
28 license history with the Board.

1 2. Respondent shall lose all rights and privileges as an Intern Pharmacist in California as
2 of the effective date of the Board's Decision and Order.

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

5 4. If she ever applies for licensure or petitions for reinstatement in the State of
6 California, the Board shall treat it as a new application for licensure. Respondent must comply
7 with all the laws, regulations and procedures for licensure in effect at the time the application or
8 petition is filed, and all of the charges and allegations contained in the First Amended Accusation
9 No. 5684 shall be deemed to be true, correct and admitted by Respondent when the Board
10 determines whether to grant or deny the application or petition. The earliest date on which
11 Respondent may reapply for a license with the Board is three years after the effective date of this
12 order.

13 5. Respondent shall pay the agency its costs of investigation and enforcement in the
14 amount of \$2,485.00 prior to issuance of a new license.

15 6. If Respondent should ever apply or reapply for a new license or certification, or
16 petition for reinstatement of a license, by any other health care licensing agency in the State of
17 California, all of the charges and allegations contained in the First Amended Accusation No. 5684
18 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement
19 of Issues or any other proceeding seeking to deny or restrict licensure.

20 ACCEPTANCE

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

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26 DATED: 7-28-16


MELISSA JIN KOGER
Respondent

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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: 7/29/16

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General



MANUEL ARAMBULA
Deputy Attorney General
Attorneys for Complainant

SD2015802989

Exhibit A

First Amended Accusation No. 5684

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2 ANTOINETTE B. CINCOTTA
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3 MANUEL ARAMBULA
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10 **BEFORE THE**
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12
13 In the Matter of the Accusation Against:

Case No. 5684

14 **MELISSA JIN KOGER**
139 Fieldwood
15 Irvine, CA 92618

FIRST AMENDED ACCUSATION

16 **Intern Pharmacist License No. INT 28760**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 21, 2011, the Board issued Intern Pharmacist License Number
24 INT 28760 to Melissa Jin Koger (Respondent). The Intern Pharmacist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on May 31, 2016,
26 unless renewed.

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

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

17 7. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a
19 board within the department pursuant to law to deny an application for a license or to
20 suspend or revoke a license or otherwise take disciplinary action against a person who
21 holds a license, upon the ground that the applicant or the licensee has been convicted
22 of a crime substantially related to the qualifications, functions, and duties of the
23 licensee in question, the record of conviction of the crime shall be conclusive
24 evidence of the fact that the conviction occurred, but only of that fact, and the board
25 may inquire into the circumstances surrounding the commission of the crime in order
26 to fix the degree of discipline or to determine if the conviction is substantially related
27 to the qualifications, functions, and duties of the licensee in question.

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

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1 8. Section 4301 of the Code states:

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

6

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

12

13 (k) The conviction of more than one misdemeanor or any felony involving the
14 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
15 or any combination of those substances.

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

REGULATORY PROVISIONS

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

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

- 28 (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

4 10. California Code of Regulations, title 16, section 1770, states:

5 For the purpose of denial, suspension, or revocation of a personal or facility
6 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
7 Professions Code, a crime or act shall be considered substantially related to the
8 qualifications, functions or duties of a licensee or registrant if to a substantial degree
9 it evidences present or potential unfitness of a licensee or registrant to perform the
10 functions authorized by his license or registration in a manner consistent with the
11 public health, safety, or welfare.

9 COSTS

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

16 FIRST CAUSE FOR DISCIPLINE

17 (November 1, 2013 Criminal Conviction for DUI on July 4, 2013)

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

21 a. On or about November 1, 2013, in a criminal proceeding entitled *People of the*
22 *State of California v. Melissa Jin Koger*, in Orange County Superior Court, case number
23 13HM08050, Respondent was convicted on her plea of nolo contendere to violating Vehicle Code
24 section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent
25 or more, a misdemeanor, and that her BAC was .20 percent or more, pursuant to Vehicle Code
26 section 23538, subdivision (b)(2). As a result of a plea agreement, the court dismissed an
27 additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)).

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1 b. As a result of the conviction, Respondent was sentenced to serve one day in the
 2 Orange County Jail, with credit for one day, and granted informal probation for three years.
 3 Respondent was ordered to complete a nine-month Level 2 First Offender Alcohol Program,
 4 complete a total of 89 days of community service, and pay fees and victim restitution.

5 c. The facts that led to the conviction are that shortly after two in the morning, on
 6 July 4, 2013, the Irvine Police Department responded to a report of a traffic collision. Officers
 7 spoke to Respondent who stated she was traveling at approximately 60 miles per hour when she
 8 rear-ended another vehicle because she was too drunk to see it. Respondent admitted consuming
 9 alcohol prior to operating her vehicle. Respondent had a strong odor of alcohol emitting from her
 10 person, her eyes were bloodshot and watery, her speech was slurred and incoherent, and she had
 11 difficulty maintaining her balance. Respondent was unable to complete the field sobriety tests as
 12 explained and demonstrated by the officer. Respondent provided a breath sample that was
 13 analyzed by the preliminary alcohol screening device with a BAC of .249 percent. Respondent
 14 was arrested for driving under the influence. During booking, she provided a blood sample that
 15 was analyzed with a BAC of .27 percent.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol on July 4, 2013)**

18 13. Respondent has subjected her license to discipline under section 4301, subdivision (h)
 19 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous or
 20 injurious to herself and to the public, in that she operated a motor vehicle on July 4, 2013 while
 21 significantly impaired by alcohol, and caused a collision with another motorist, as described in
 22 paragraph 12, above.

23 **THIRD CAUSE FOR DISCIPLINE**

24 **(March 15, 2016 Criminal Conviction for DUI on August 1, 2015)**

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

28 ///

1 a. On or about March 15, 2016, in a criminal proceeding entitled *People of the*
2 *State of California v. Melissa Jin Koger*, in Orange County Superior Court, case number
3 15WM09834, Respondent was convicted on her plea of guilty to violating Vehicle Code section
4 23152, subdivision (a), driving under the influence of alcohol with one prior, a misdemeanor,
5 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)
6 of .08, Vehicle Code section 20002, subdivision (a), hit and run with property damage, a
7 misdemeanor, and Vehicle Code section 23154, subdivision (a), driving with a blood alcohol
8 concentration of .01 or greater while on probation, an infraction.

9 b. As a result of the conviction, Respondent was sentenced to serve 50 days in the
10 Orange County Jail, granted informal probation for five years. Respondent was ordered to
11 complete an 18 month Multiple Offender Alcohol Program and to pay restitution to the victim of
12 the hit and run.

13 c. The facts that led to the conviction are that on or about the evening of August 1, 2015,
14 the California Highway Patrol (CHP) responded to a report of a single vehicle collision in Costa
15 Mesa. The investigation determined that Respondent had driven off the road, collided with a
16 metal light pole, then drove over a sprinkler head. Her vehicle had moderate collision damage and
17 was situated in a dirt/vegetation area on the transition ramp from SR-55 to I-405. The officer
18 observed that Respondent had a strong odor of alcohol on her breath and person, her eyes were
19 bloodshot and watery, her speech was slow and slurred, and she appeared confused. Respondent
20 was unable to complete the field sobriety tests as explained and demonstrated by the officer.
21 Respondent provided two breath samples which were analyzed with a BAC of .20 and .21,
22 respectively. Respondent was arrested. CHP officers learned that Respondent had been in another
23 collision just prior to driving off the road. The victim of that collision reported that Respondent
24 had rear-ended her vehicle while driving on SR-55. Both she and Respondent pulled over onto the
25 shoulder of the road. The victim made contact with Respondent at Respondent's vehicle, and
26 informed Respondent that she had called 9-1-1 to report the collision. After a brief conversation,
27 Respondent fled the scene without exchanging any information. The victim was able to identify
28 Respondent as the person responsible for the hit and run collision.

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FOURTH CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol on August 1, 2015)

15. Respondent has subjected her license to discipline under section 4301, subdivision (h) of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself and to the public, in that she operated a motor vehicle on August 1, 2015, while significantly impaired by alcohol and caused a collision with another motorist, as described in paragraph 14, above.

FIFTH CAUSE FOR DISCIPLINE

(Convictions of More than One Misdemeanor Involving the Use of Alcoholic Beverages)

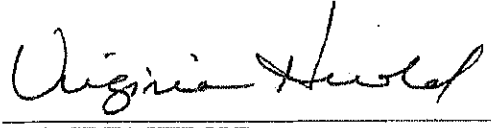
16. Respondent has subjected her license to discipline under section 4301, subdivision (k), of the Code in that she was convicted of more than one misdemeanor involving the use of alcoholic beverages, as described in paragraphs 12 and 14, above.

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 Intern Pharmacist License Number INT 28760, issued to Melissa Jin Koger;
2. Ordering Melissa Jin Koger 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: 7/14/16



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

SD2015802989
81196584.doc

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Attorneys for Complainant

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10 **BEFORE THE**
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13 In the Matter of the Accusation Against:

Case No. 5684

14 **MELISSA JIN KOGER**
45 Donovan
15 Irvine, CA 92620

ACCUSATION

16 **Intern Pharmacist License No. INT 28760**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 21, 2011, the Board of Pharmacy issued Intern Pharmacist
24 License Number INT 28760 to Melissa Jin Koger (Respondent). The Intern Pharmacist License
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 May 31, 2016, unless renewed.

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28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
9 operation of law or by order or decision of the board or a court of law, the placement of a
10 license on a retired status, or the voluntary surrender of a license by a licensee shall not
11 deprive the board of jurisdiction to commence or proceed with any investigation of, or
12 action or disciplinary proceeding against, the licensee or to render a decision suspending
13 or revoking the license.

12 **STATUTORY PROVISIONS**

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

17 7. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a board
19 within the department pursuant to law to deny an application for a license or to suspend
20 or revoke a license or otherwise take disciplinary action against a person who holds a
21 license, upon the ground that the applicant or the licensee has been convicted of a crime
22 substantially related to the qualifications, functions, and duties of the licensee in
23 question, the record of conviction of the crime shall be conclusive evidence of the fact
24 that the conviction occurred, but only of that fact, and the board may inquire into the
25 circumstances surrounding the commission of the crime in order to fix the degree of
26 discipline or to determine if the conviction is substantially related to the qualifications,
27 functions, and duties of the licensee in question.

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

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8. 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.

....

(i) 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. . . .

REGULATORY PROVISIONS

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

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.

1 10. California Code of Regulations, title 16, section 1770, states:

2 For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
4 Code, a crime or act shall be considered substantially related to the qualifications,
5 functions or duties of a licensee or registrant if to a substantial degree it evidences
6 present or potential unfitness of a licensee or registrant to perform the functions
7 authorized by his license or registration in a manner consistent with the public health,
8 safety, or welfare.

6 COSTS

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

13 FIRST CAUSE FOR DISCIPLINE

14 (November 1, 2013 Criminal Conviction for DUI on July 4, 2013)

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

18 a. On or about November 1, 2013, in a criminal proceeding entitled *People of the*
19 *State of California v. Melissa Jin Koger*, in Orange County Superior Court, case number
20 13HM08050, Respondent was convicted on her plea of nolo contendere to violating Vehicle
21 Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08
22 percent or more, a misdemeanor, and that her BAC was .20 percent or more, pursuant to Vehicle
23 Code section 23538, subdivision (b)(2). As a result of a plea agreement, the court dismissed an
24 additional count of driving under the influence of alcohol (Veh. Code, § 23152(a)).

25 b. As a result of the conviction, Respondent was sentenced to serve one day in the
26 Orange County Jail, with credit for one day, and granted informal probation for three years.
27 Respondent was ordered to complete a nine-month Level 2 First Offender Alcohol Program,
28 complete a total of 89 days of community service, and pay fees and victim restitution.

1 c. The facts that led to the conviction are that shortly after two in the morning, on
2 July 4, 2013, the Irvine Police Department responded to a report of a traffic collision. Officers
3 spoke to Respondent who stated she was traveling at approximately 60 miles per hour when she
4 rear-ended another vehicle because she was too drunk to see it. Respondent admitted consuming
5 alcohol prior to operating her vehicle. Respondent had a strong odor of alcohol emitting from her
6 person, her eyes were bloodshot and watery, her speech was slurred and incoherent, and she had
7 difficulty maintaining her balance. Respondent was unable to complete the field sobriety tests as
8 explained and demonstrated by the officer. Respondent provided a breath sample that was
9 analyzed by the preliminary alcohol screening device with a BAC of .249 percent. Respondent
10 was arrested for driving under the influence. During booking, she provided a blood sample that
11 was analyzed with a BAC of .27 percent.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Dangerous Use of Alcohol on July 4, 2013)**

14 13. Respondent has subjected her license to discipline under section 4301, subdivision (h)
15 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous
16 or injurious to herself and to the public, in that she operated a motor vehicle on July 4, 2013 while
17 significantly impaired by alcohol, and caused a collision with another motorist, as described in
18 paragraph 12, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Dangerous Use of Alcohol on August 1, 2015)**

21 14. Respondent has subjected her license to discipline under section 4301, subdivision (h)
22 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous
23 or injurious to herself and to the public. The circumstances are as follows:

24 a. On or about the evening of August 1, 2015, the California Highway Patrol
25 (CHP) responded to a report of a single vehicle collision in Costa Mesa. The investigation
26 determined that Respondent had driven off the road, collided with a metal light pole, then drove
27 over a sprinkler head. Her vehicle had moderate collision damage and was situated in a
28 dirt/vegetation area on the transition ramp from SR-55 to I-405. The officer observed that

1 Respondent had a strong odor of alcohol on her breath and person, her eyes were bloodshot and
2 watery, her speech was slow and slurred, and she appeared confused. Respondent was unable to
3 complete the field sobriety tests as explained and demonstrated by the officer. Respondent
4 provided two breath samples which were analyzed with a BAC of .20 and .21, respectively.
5 Respondent was arrested. CHP officers learned that Respondent had been in another collision
6 just prior to driving off the road. The victim of that collision reported that Respondent had rear-
7 ended her vehicle while driving on SR-55. Both she and Respondent pulled over onto the
8 shoulder of the road. The victim made contact with Respondent at Respondent's vehicle, and
9 informed Respondent that she had called 9-1-1 to report the collision. After a brief conversation,
10 Respondent fled the scene without exchanging any information. The victim was able to identify
11 Respondent as the person responsible for the hit and run collision.

12 b. On August 4, 2015, in a criminal proceeding entitled *People of the State of*
13 *California v. Melissa Jin Koger*, in Orange County Superior Court, case number 15WM09834,
14 Respondent entered a plea of not guilty to charges of driving under the influence (Veh. Code, §
15 23152(a)), driving with a blood alcohol concentration (BAC) of .08 percent or more (Veh. Code,
16 § 23152(b)), hit and run with property damage (Veh. Code, § 20002(a)), and driving with a BAC
17 of .01 percent or greater while on probation for DUI (Veh. Code, § 23154(a)), misdemeanors.
18 The charges are still pending.

19 PRAYER

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

22 1. Revoking or suspending Intern Pharmacist License Number INT 28760, issued to
23 Melissa Jin Koger;

24 2. Ordering Melissa Jin Koger to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

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

DATED: 11/23/15 Virginia Herold

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

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