

1 DOUGLAS D. HOLTHAUS (SBN 74560)
2 HOLTHAUS & ASSOCIATES
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FILED
JAN 11 2016
STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

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8 **STATE BAR COURT OF THE STATE OF CALIFORNIA**
9

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11 **IN THE MATTER OF THE CONVICTION**) Case No.: 15-C-13232
12 **OF:**)
13 **DOUGLAS DALE HOLTHAUS, No. 74560**) **RESPONSE OF MEMBER DOUGLAS D**
14 **A Member of the State Bar**) **HOLTHAUS TO NOTICE OF HEARING**
15) **OF CONVICTION**
16)
17) Judge: W. Kearse McGill
18) Hearing Date: January 20, 2016
19) Time: 9:30 a.m.
20) Courtroom: D

21 Comes now Member, Douglas Dale Holthaus, CSB #74560 ("Member"), in response to this
22 Court's Notice of Hearing on Conviction dated December 14, 2015, pursuant to Rules of Procedure
23 of the State Bar of California 5.345(B), respectfully submits that Member's subject conviction for
24 violation of Vehicle Code section 23152(f) does not constitute moral turpitude nor misconduct
25 warranting discipline.

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I.

ISSUES PRESENTED

1. Whether Member's second conviction for violation of Vehicle Code section 23152(f) involves moral turpitude.

2. Whether Member's second conviction for violation of Vehicle Code section 23152(f) involves other misconduct warranting discipline.

II.

STATEMENT OF FACTS

1. Member has been practicing law for thirty eight (38) years and has no disciplinary history, except as cited in his *Declaration in Support* hereof.

2. Member's practice of law has varied over the last four decades, but now is relatively confined to international legal representation, maritime law matters, corporations and limited liability entities, trust administration, and business disputes with some real estate thrown in. Member donates time to representing community interests concerning community planning conformance, environmental issues, water quality, affordable housing, and like issues. Member's clientele presently rests at about 25 active clients and their cases, but that number changes regularly. Member has a number of matters in pre-litigation or litigation and that will remain the case for at least the coming 18 months. Member employs office staff including legal assistants, as well as several young attorneys, who assist under Member's supervision and direction.

3. Since 2002, Member has been diagnosed and treated for various forms of metastatic cancer, including colon, liver, testicular, thyroid, gallbladder, lungs, lymph nodes, salivary glands and esophageal. These tumors were treated with a number of therapies including radiation, chemotherapy, surgical resection, and targeted wide-band laser knife. Member's various diagnoses and treatments extended from 2002 through approximately 2012, following which Member was determined to be in remission. Since then and continuing through the present, Member undergoes frequent and repeated examinations to identify the existence of new cancer. These examinations include physical, X-ray, MRI, PET scan, CT scan, and fluoroscopic exam. On average, these are

1 administered on a bi-monthly basis. Concurrent with the cancer therapies and remission
2 examinations, Member was prescribed a regimen of medications to treat (and hopefully cure) the
3 damage sustained by Member's body, both as a result of aforementioned cancers, as well as the
4 residual sequelae secondary to member's treatments and condition. Those residual issues requiring
5 daily medication included multiple bleeding ulcers (and the resulting anemia), anti-depressants, and
6 insomnia. At the time of the drunk driving arrest in March 2015 Member was on a diet of no less
7 than fifteen meds per day

8 4. As a result of the various cancer fighting therapies, residual side-effects were
9 sustained including of most importance, multiple ulcers to Member's digestive system which in
10 turn, have resulted in chronic anemia due to substantial internal bleeding. Medical intervention has
11 included multiple-week hospitalizations to effectuate whole blood and fluid transfusions.

12 5. In particular, to treat the anemia resulting from the ulcers which were caused by
13 chemotherapy acids, Member was prescribed an iron supplement named Ferrous Sulfate Elixir, a
14 medication manufactured by Hi-Tech Pharmacal (NDC 50383-778-16). Member is under close
15 medical supervision and guidance.

16 7. Based on the physician's instruction and advice that Member's liver was too
17 compromised due to the cancer, subsequent treatments and surgery, he was advised to abstain, to
18 the extent possible, from alcohol consumption.

19 7. Member continued to suffer from anemia and other post-treatment side-effects.

20 8. During an evening meeting with a client Member consumed what was thought to be
21 the correct dosage of Ferrous Sulfate Elixir (eight ounces), together with an evening's share of each
22 prescribed medication. After approximately 35 minutes Member departed the client's business to
23 return home, a short distance away. Member did not feel impaired, and was not aware that the
24 medication consumed, together with the other medications prescribed, would and was impacting
25 Member's ability to safely and lawfully operate an automobile.

26 9. Member was involved in a side-swipe collision while returning home. Member
27 stopped at the scene, exited the automobile and waited for the police to arrive. When they did
28 arrive, Member cooperated fully and when selecting the alcohol test to administer, elected for blood

1 be drawn and tested, it being the most accurate methodology. At that time, Member was convinced
2 that there was no alcohol in his system. He was wrong, and Member's blood alcohol subsequently
3 proved to be approximately 0.05% PPM (See Exhibit A). When confronted with this information,
4 Member checked the Ferrous Sulfate Elixir (See Exhibit B) and discovered that not only did it
5 contain alcohol, but the dosage was one ounce per day, not the eight he had been consuming.

6 10. Concerned that the medication regiment was inappropriate and particularly with its
7 apparent lack of efficacy in treating his ulcers and anemia, Member consulted with and transferred
8 his treatment to a different physician who in turn put Member through an extreme battery of tests,
9 physical and psychological, and as a result modified the prescription medicine plan by removing
10 and substituting various medications, in particular, the Ferrous Sulfate Elixir, which was eliminated
11 and Member has not used it since.

12 10. Member's misdemeanors, dated March 26, 2015, resulted from a car collision that
13 did not result in personal injury to other persons, and the property damage was fully compensated
14 for and satisfied by Member.

15 11. On May, 20, 2015, more than two months before entering his guilty plea, Member
16 enrolled in the 18-month San Diego State University Center for Alcohol & Drug Studies & Services
17 program (See Exhibit C) concerning which he will continue to attend through January 2017.
18 Member has attended and will continue to attend face-to-face meetings with Program Counselors,
19 two hour and ten minutes weekly Alcohol/Drug Education Meetings, and one hour and a half
20 weekly Group Meetings.

21 12. On June 29, 2015, Member willingly started attending, and still attends weekly
22 Alcoholics Anonymous meetings.

23 13. Member attended a multi-hour course conducted by MAAD (Mothers Against Drunk
24 Driving) which emphasizes the adverse consequences to the community of DUI violations.

25 14. Member served a court imposed four-day-home-confinement/sentence, and paid a
26 fine of \$2,635 in addition to the \$1,710 tuition of the 18-month San Diego State University
27 Program.

28

1 15. Member has his driver's licenses suspended for twelve months, with restrictive
2 driving thereafter, and suffered a \$6,000.00 annual increase in his family's automobile insurance
3 premiums.

4 16. Member incurred significant sums paid to legal counsel for representation in addition
5 to the expenses of procuring substitute transportation to court appearances, depositions and the DUI
6 programs among other engagements and commitments.

7 17. Member has undergone, and still is undergoing, intense medical intervention to
8 address the underlined medical rehabilitation issues that resulted in the convictions. This course of
9 treatment has included psychotherapy, intense testing, counseling, and support actions.

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III.

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ARGUMENT

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This brief addresses (1) whether Member's second conviction for violation of Vehicle Code section 23152(f) [driving under the influence] involves moral turpitude, and (2) whether Member's second conviction for violation of Vehicle Code section 23152(f) involves other misconduct warranting discipline, in light of mitigating factors.

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A. Member's Second Conviction For Violation of Vehicle Code Section 23152(f) Does Not Entail Readiness To Do Evil So It Does Not Involve Moral Turpitude.

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The Member's second violation of Vehicle Code section 23152(f) does not involve moral turpitude. Member did not act violently, nor showed specific intent or disrespect for the legal system. Crimes involving moral turpitude entail "a general readiness to do evil." *People v. Castro*, 38 Cal.3d 301 (1985). As listed by *Castro*, such crimes include "child molestation, crimes of violence, torture, brutality and so on." *Castro*, supra. at p. 315. Moral turpitude pertains, in short, to crimes that involve a specific intent, such as intent to defraud or "are extremely repugnant to accepted moral standards, such as murder or serious sexual offenses." *In re Lesansky*, 25 Cal.4th 11 (2001).

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Convictions for drunk driving, however, do not per se establish moral turpitude. *In re Kelley*, 52 Cal.3d 379 (1990). Thus, courts generally look at the surrounding circumstances when

1 making this determination. The court in *In re Matter of Anderson* (Review Dept., 1992) 2 Cal. State
2 Bar Ct. Rptr. 208, for instance, found that four drunk driving convictions and a long history of
3 alcohol abuse, along with the attorney's uncooperative and assaultive behavior during several
4 arrests was not moral turpitude.

5 Thus, in determining whether Member's convictions involve moral turpitude, a look at the
6 surrounding circumstances is warranted. Here, Member's level of alcohol did not result from
7 irresponsible alcohol consumption but from his use of a medication, Ferrous Sulfate Elixir, along
8 with other medications all of which were prescribed by his doctor, as shown by Member's
9 consumption of the medications and the low alcohol level of .05 per cent reflected in the B.A.C.
10 test. Further, Member was collaborative with the authorities on the scene of the accident, with the
11 Superior Court during the proceedings that resulted in his conviction, with all the DUI support
12 programs and entities, and with the State Bar of California in the current proceedings.

13 Even further, Member actively pursued a change in his medications regime and changed his
14 doctor. Member attended AA meetings and DUI classes for several months in a disciplined manner
15 and continues to do so religiously. Thus, the self-evident mitigating circumstances surrounding
16 Member's conduct before, during, and after the conviction show that, to the extent there is a general
17 readiness or intent to be addressed, it is his general readiness and intent to overcome serious adverse
18 health issues, which takes us to the second matter.

19 **B. In Light Of The Mitigating Factors, The Member's Second Conviction For Violation of**
20 **Vehicle Code section 23152(f) Does Not Involve Other Misconduct Warranting**
21 **Discipline.**

22 The second issue is whether Member's second conviction for violation of Vehicle Code
23 section 23152(f) involves other misconduct warranting discipline, in light of the surrounding
24 mitigating circumstances previously noted (See Statement of Facts). This proceeding's referral
25 order, filed on December 11, 2015, is to determine whether the facts and circumstances involved
26 moral turpitude or other misconduct warranting discipline. Upon a referral order of that type, the
27 appropriate disposition could include dismissal of the proceedings if the hearing judge [finds] that
28 the particular misconduct did not warrant professional discipline. (*In the Matter of Carr* (Review

1 Dept. 1991) 1 Cal. State Bar Ct. Rptr. 756, 761, 764; see also In the Matter of Respondent I (Review
2 Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260, 4).

3 The standard for “other misconduct warranting discipline” is not defined clearly but courts
4 have found it applicable upon attorneys’ willful failure to pay taxes (See, e.g., In re Morales (1983)
5 35 Cal.3d 1, 196 Cal.Rptr. 353, 671 P.2d 857; and In re Rohan (1978) 21 Cal.3d 195, 145 Cal.Rptr.
6 855, 578 P.2d 102), domestic violence (In re Otto, (1989) 48 Cal. 3d 970, 772 P.2d 558) violent
7 criminal conduct as result of uncontrolled consumption of alcohol (In re Hickey (1990) 50 Cal.3d
8 571, 579, 268 Cal.Rptr. 170, 788 P.2d 684) and for a second drunk driving conviction while on
9 probation for the first conviction (In re Kelley 276 CR 375, 379; In the Matter of Respondent I
10 (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 260; distinguishing Kelley, Review Department
11 affirmed dismissal of proceeding based on several significant mitigating factors). More recently, in
12 In the Matter of Bravo, (2014) Not Reported in Cal.Rptr.3d, Case Number 11-C-18189, the court
13 disciplined an attorney after a third alcohol-related driving conviction, premised on aggravating
14 factors and the absence of mitigating factors.

15 Kelley is the controlling authority as it most closely resembles the case at hand. There, as
16 here, an attorney was convicted a second time for drunk driving while on probation for the first
17 conviction. In Bravo there were three drunk driving convictions, significant aggravating factors and
18 absence of mitigating factors. In contrast, Member presents several significant mitigating factors
19 like in Respondent, where the court dismissed the disciplinary proceeding after finding attorney was
20 cooperative with the arresting officer, obtained professional treatment and performed his job in an
21 excellent manner.

22 Unlike in Kelley and Bravo, and like Respondent, there are several significant mitigating
23 factors present here and, except for the probation violation, no aggravating factors.

24 **1. Mitigating Factors**

25 First, a discipline-free record is a mitigating factor recognized by the courts. (Matter of
26 Dickstein (2015) Not Reported in Cal.Rptr.3d, Case No. 10-C-07932, page 1). In Dickstein,
27 attorney’s more than 30-year discipline-free record was a mitigating factor regardless of two prior
28 federal court sanctions. In Kelley and Bravo, attorneys had less than five years of licensed legal

1 practice when they were disciplined by the State Bar. Member has a more than 38-year career with
2 only a private reproof and a complaint that was denied and resulted in no action, a sharp contrast.

3 Member has been practicing law for thirty eight (38) years, specializing in Maritime Law
4 and in particular international yachting competitions representing international syndicates and
5 organizations including Prada, Team Dennis Connor / Stars and Stripes, Bill Koch's America
6 Three, The Beach Boys Syndicate, Team New Zealand, Sholozza of South Africa, illbruck of
7 Germany, the Alinghi Syndicate of Geneva, Switzerland and, most recently, the American Oracle
8 Challenge. Member has also actively donated his time to represent community interests concerning
9 community plan conformance, environmental issues, water quality, affordable housing, and like
10 issues.

11 Second, like in *Respondent*, where the court held attorney performing his job post-
12 conviction as a government attorney in an excellent manner was a mitigating factor, Member has
13 continued to successfully practice law during the nine months that have passed since the incident
14 that gave rise to this proceeding. Moreover, Member's change of doctor and medications regime
15 improved his physical and mental health and invigorated his legal practice. After the incident,
16 Member's legal practice employed two additional attorneys and two legal assistants in addition to
17 external consultants. Member represents several clients. Some, in his capacity as an attorney,
18 others as a trustee and others as a business consultant. His legal practice serves clients ranging from
19 tenants being taken advantage of by landlords and small businesses dealing with contractual
20 disputes to more complex transactional and financial matters. Regardless of coming from different
21 walks of life, all of Member's clients rely on him because he is a reliable attorney. More
22 importantly, Member is a reliable person. In sum, Member's record and his successful legal
23 practice show the character traits necessary for the practice of law and confirm that he poses no
24 danger to his clients, the courts or the public.

25 Third, the Member's B.A.C. level of 0.05 per cent was not only on the lower end of the
26 spectrum taking into account his weight at the time but, more importantly, it was caused by his
27 inadvertently higher than normal consumption of Ferrous Sulfate Elixir, a prescribed medication
28 that contains alcohol. The Kaiser Permanente Drug Encyclopedia's reference to ferrous sulfate

1 states that: “Before taking this medication, tell your doctor or pharmacist your medical history,
2 especially of: use/abuse of alcohol, liver problems, stomach/intestinal problems (e.g., ulcer,
3 colitis)... Liquid preparations of this product may contain sugar and/or alcohol. Caution is advised
4 if you have diabetes, alcohol dependence, or liver disease.”

5 ([https://healthy.kaiserpermanente.org/health/care/consumer/health-wellness/drugs-and-natural-
6 medicines/drug-encyclopedia](https://healthy.kaiserpermanente.org/health/care/consumer/health-wellness/drugs-and-natural-
6 medicines/drug-encyclopedia))

7 Fourth, unlike *Kelley* and *Bravo*, where the attorneys were agitated and confrontational
8 towards police officers or dishonest with the court (See *Bravo* at 4, 5), in the case at hand Member’s
9 conduct towards the police officers, the DUI support programs and entities, the San Diego Superior
10 Court and the State Bar has been, in line with *Respondent*, collaborative, respectful and congenial.

11 Fifth, in *Kelley*, the attorney’s B.A.C. level on the second conviction was 0.17 per cent.
12 (*Kelley*, at 378). In *Respondent*, where the court dismissed the disciplinary proceeding, the
13 attorney’s B.A.C. level on the second drunk driving conviction was 0.26 per cent. (*Respondent*, at
14 264). Here, the Member’s B.A.C. level was 0.05 per cent, as shown in the copy of the San Diego
15 Police Forensic Science Section Alcohol Analysis Report attached herein as Exhibit A. That is less
16 than one-third of the B.A.C. level in *Kelley* and less than one-fifth of the B.A.C. level in
17 *Respondent*.

18 Sixth, courts have found addictive alcoholism to be a mitigating factor if it is causally
19 related to the misconduct at issue and the attorney has shown sustained rehabilitative efforts. (*In re*
20 *Billings* (1990) 50 Cal.3d 358, 367, 267 Cal.Rptr. 319, 787 P.2d 617.) Although no evidence
21 indicates addictive alcoholism is causally related to the misconduct at hand, as proof of Member’s
22 commitment to and respect for the practice of law, Member has pursued serious and successful
23 initiatives to preserve and enhance his medical and mental health. Thus, he actively engaged in a
24 multi-pronged rehabilitative effort attacking all possible fronts. Immediately after the incident,
25 Member checked his medicine side effects and found that one of his medicines contained alcohol
26 and, more importantly, he realized the dosage he was taking until that point was 8 times the
27 prescribed dosage so he immediately not only corrected the dosage but sought a change in his
28 medication regime. Further, Member changed his doctor. Even further, less than two months after

1 the incident and as a self-discipline measure, Member enrolled in and started attending weekly AA
2 chemical dependency program meetings.

3 The results have been very satisfactory not only regarding his health but his law practice.
4 Therefore, Member at no time showed disrespect for the legal system and poses no danger to the
5 public.

6 **2. Level of discipline**

7 The *Kelley* court held relatively minimal discipline was warranted and issued a public
8 reproof with conditions after weighing a few mitigating factors - lack of prior disciplinary record,
9 involvement in community service and cooperation during disciplinary proceedings – against a few
10 aggravating ones – two convictions in only four years of legal practice, attorney misbehavior
11 towards the officers, a high B.A.C. level and disregard for probation conditions.

12 In *Bravo* the court issued a public reproof with conditions after finding that attorney was on
13 his third alcohol-related driving conviction and displayed dishonesty with the police officers and the
14 court.

15 Here, there are several significant mitigating factors and, excepting the violation of
16 probation from his first conviction, a factor worthy of attention, no additional aggravating factors.
17 Member's misdemeanor, dated March 26, 2015, resulted from a car collision that did not result in
18 personal injury to other persons, and the property damage was fully compensated for and satisfied
19 by Member. Member never acted violently or even evasively as he at all times has cooperated with
20 the authorities and entities involved.

21 In addition, there are several significant mitigating factors:

- 22 • Before this proceeding, Member had a more than 38-year career with only a private
23 reproof and a complaint that was denied and resulted in no action.
- 24 • Immediately after the accident, Member checked his medicine side effects and found
25 that one of his medicines contained alcohol and, more importantly, realized he was
26 taking an excessive dosage so he immediately not only corrected the dosage but
27 changed his doctor and medication regime.

28

- 1 • Several months before he entered a guilty plea and less than two months after the
2 accident, Member enrolled in the 18 month San Diego State University Center for
3 Alcohol & Drug Studies & Services program concerning which he will continue to
4 attend through January 2017.
- 5 • Member attended and will continue to attend face-to-face meetings with Program
6 Counselors, two hour and ten minutes weekly Alcohol/Drug Education Meetings,
7 and one hour and a half weekly Group Meetings.
- 8 • Member attended and will continue to attend Alcoholics Anonymous meetings to
9 insure his serious commitment to the practice of law and fulfill his responsibilities to
10 his family, clients, the courts and the public.
- 11 • Member attended a multi-hour course conducted by MAAD (Mothers Against Drunk
12 Driving) which emphasizes the adverse consequences to the community of DUI
13 violations.
- 14 • Member has served a court-imposed four day home-confinement / sentence, and paid
15 a fine of \$2,635, and the \$1,710 tuition of the 18-month San Diego State University
16 Program.
- 17 • Member has his driver's license suspended for twelve months, with restrictive
18 driving thereafter, and suffered \$6,000.00 annual increase in his family's automobile
19 insurance premiums.
- 20 • Member has incurred significant sums paid to legal counsel for representation in this
21 matter and the expenses of procuring substitute transportation to attend court
22 appearances, depositions, the DUI programs, among other engagements.
- 23 • Member is actively participating in a rehabilitation process by attending the two
24 courses mentioned above and restraining his alcohol consumption as indicated in
25 said courses.

26 Therefore, Member poses no danger to his clients, the courts or the public.
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28 **IV. CONCLUSION**

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For all of the foregoing reasons, Member Douglas Dale Holthaus very respectfully requests that the court dismiss the disciplinary proceedings.

Respectfully submitted,



By: Douglas D. Holthaus

EXHIBIT A – B.A.C. LEVEL TEST

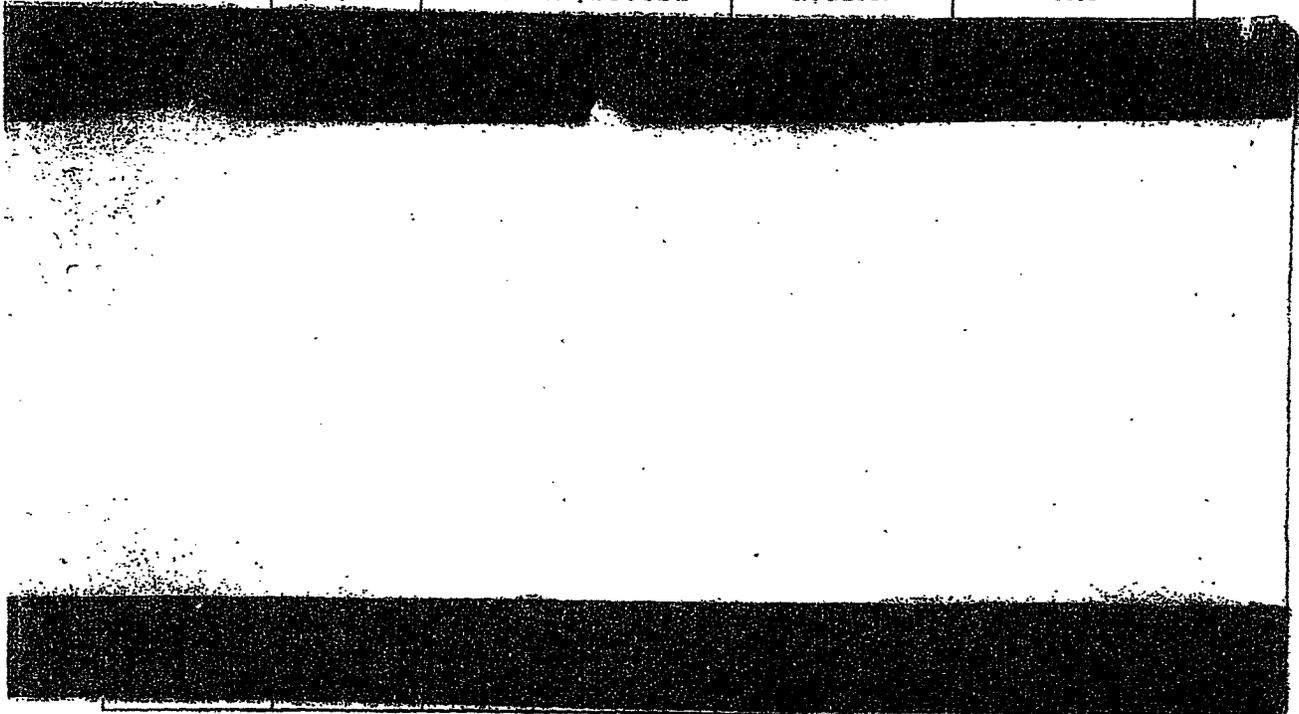


SAN DIEGO POLICE
 FORENSIC SCIENCE SECTION
 ALCOHOL ANALYSIS REPORT



APPLIED METHOD: GAS CHROMATOGRAPHIC HEAD SPACE ANALYSIS

SAMPLE BARCODE #	DRAW DATE	SUBJECT NAME	DATE SAMPLE RECEIVED BY ANALYST	RESULTS OF CHEMICAL TESTS (G/100ML)
10471038	3/26/2015	HOLTHAUS, DOUGLAS	3/30/2015	0.05



The uncertainty of measurement for alcohol quantitation on HSGC 3 is ± 0.0052 grams % (95% confidence level).

I, Lisa Merzowski, certify under penalty of perjury, under the laws of the State of California, that the above blood or urine analysis was performed during the regular course of my duties, and is a true and correct copy thereof. I further certify that I am classified by the State Department of Health as a Forensic Alcohol Analyst for the San Diego Police Department, that I am qualified to perform these analysis pursuant to Title 17 of the California Code of Regulations, and that the equipment used in arriving at the results was in proper working order at the time this analysis was performed.

NAME OF ANALYST: Lisa Merzowski	DATE OF ANALYSIS: April 1, 2015
TITLE: Criminalist II	DATE RAW DATA COMPILED: April 1, 2015
SIGNATURE: <i>Lisa Merzowski</i> DATE: 4/2/15	DATE REPORT GENERATED FROM DATA: April 2, 2015

Tech Review *[Signature]* Admin Review *[Signature]*

Original on file in Laboratory

EXHIBIT B

DDH DWI#

American Well Corp
1251 California Avenue

Date: 4/13/15

Corona, CA 92691
951-371-2222

Cust SKU:

SKU : 370692 FERROUS SULFATE 220MG/5ML ELIXR 160 02049
Location : VQ40C6 Qty : 12 001 / 001 NDC/UPC/HRI:
35038377816

Pick ticket Control Number : 844020215
Pick Number : 000000 BTCH: 0000444911 012192849

H1

Lot: 06

LOT: 0601 LOMA SULFATE 160
2014920
LOT: 0601 TRANS SULFATE

SAN DIEGO, CA 92106 2629

Cust PO: ben

Cust

ABC # 370-692
160Z
AKO077816
74007778164
\$10.28
12 EA
FERROUS SUL 220
ELX
2416
JTC

H1-SP7-14

17987280 1



CHD
12 D135/
PT LOMA
370-692

755425248

669-076
PT LOMA
D135/
/51D
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CHD
755425248

669-076
PT LOMA
D135/
/51D
21
CHD
755425248

EXHIBIT C

HOLTHAUS, DOUGLAS
419 LA CRESCENTIA DR
SAN DIEGO, CA 92106

Group: M26-X

DUI Program Number : 106163

Current Status : ACTIVE

Account Balance : \$0.00

Account Financial Status : \$0.00 Current

Program Type : Multiple Offender 18Mth

Completions To Date : Ed Sessions: 6 Gr Sessions: 28 F2F Sessions: 17 Reentry Sess: 0
AA Sessions: 32 Absences: 4

Total Days On Leave :

Reason For Leave :

Date of First Service : 5/20/2015

Date of Reinstatement :

Group Number : M26-X

Group Begin Date : 5/26/2015

Education Number : E11

Education Begin Date : 6/2/2015

Ed Session / Date / Attend : 6 - 06/02/15 - P 1 - 06/09/15 - P 2 - 06/16/15 - P
3 - 06/23/15 - P 4 - 06/30/15 - A 5 - 07/07/15 - P 4 - 08/10/15 - P

Makeup Ed / Date / Attend :

Enrollment Type : New

Confidential Name : NONE

Emergency Contact : CELESTE-W IFE

Phone: (619) 992-8353

Client's Telephone Number(s) Home: (619) 225-8353

Work:

Date of Birth : 9/3/1951

Court of Conviction : 37100

Court Docket Number : M199784

Social Security/ID Number :

DL Number : S0854772

Referral Source : COURT

Date of Arrest : 3/26/2015

Arresting Agency : San Diego

Jail Days : 0

Blood Alcohol Level : 05

Prior Alcohol Treatment : Yes No

Other Drugs at Arrest : Yes

Number of Prior DUIs : 01

Gender : Male Female

Ethnicity : Caucasian/White

Records Last Update/By : Merly Garcia

9/23/2015 2:15:24 PM

Clinical Records on File :

Residence ZIP Code : 92106-

Years In County : 63

Number of Dependents : 1

Years of Education : 20

Marital Status : Separated

Employment Status : Not in labor force

Military Experience/Status : No Military Experience

Gross Monthly Income : 10000

Source of Income : Other

DL 804 on file : Yes No

1 Reproval to me. A second matter involved a complaint of improper contact with the represented
2 party, which again was denied and resulted in no action. Besides those two instances I cannot recall
3 any other disciplinary proceeding other than the one I am presently confronted with.

4 3. My practice of law has varied over the last four decades, but now is relatively
5 confined to international legal representation, maritime law matters, corporations and limited
6 liability entities, trust administration, and business disputes with some real estate thrown in. I
7 donate my time to represent community interests concerning community plan conformance,
8 environmental issues, water quality, affordable housing, and like issues. My clientele presently rests
9 at about 25 active clients and their cases, but that number changes regularly. I have a number of
10 matters in pre-litigation or litigation and that will remain the case for at least the coming 18 months.
11 I employ office staff including legal assistants, as well as several young attorneys, who assist under
12 my supervision and direction.

13 4. Since 2002, I have been diagnosed and treated for various forms of metastatic
14 cancer, including colon, liver, testicular, thyroid, gallbladder, lungs, lymph nodes, salivary glands
15 and esophageal. These tumors were treated with a number of therapies including radiation,
16 chemotherapy, surgical resection, and targeted wide-band laser knife. My various diagnoses and
17 treatments extended from 2002 through approximately 2012, following which I was determined to
18 be in remission. Since then and continuing through the present I undergo frequent and repeated
19 examinations to identify the existence of new cancer. These examinations include physical, X-ray,
20 MRI, PET scan, CT scan, and fluoroscopic exam. On average, these are administered on a bi-
21 monthly basis. Concurrent with the cancer therapies and remission examinations, I was prescribed a
22 regimen of medications to treat (and hopefully cure) the damage sustained by my body, both as a
23 result of my cancers, as well as the residual sequelae secondary to my treatments and conditions.
24 Those residual issues requiring daily medication include multiple bleeding ulcers (and resulting
25 anemia), anti-depressants, and insomnia. At the time of the drunk driving arrest in March 2015 I
26 was on a diet of no less than fifteen meds per day.

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1 5. In particular, to treat the anemia resulting from the ulcers which were caused by
2 chemotherapy acids, I was prescribed an iron supplement named "Ferrous Sulfate Elixir", a
3 medication manufactured by Hi-Tech Pharmacal (NDC 50383-778-16). I am under close medical
4 supervision and guidance.

5 6. Based on the physician's instruction and advice that my liver was too compromised
6 due to the cancer, subsequent treatments and surgery, he advised to abstain to the extent possible
7 from alcohol consumption.

8 7. I continued to suffer from anemia and other post-treatment side-effects.

9 8. During an evening meeting with a client I consumed what I thought to be the correct
10 dosage of eight ounces, together with my evening's share of each prescribed medication. After
11 approximately 35 minutes I departed the client's business location with the intention of returning
12 home, which was located but a short distance away. When I left, I did not feel impaired, nor was I
13 aware that the medication I had consumed, together with the other medications prescribed, would
14 and was impacting my ability to safely and lawfully operate my automobile.

15 9. I was involved in a side-swipe collision when returning home. I stopped at the scene,
16 exited my automobile and waited for the police to arrive. When they did so I cooperated fully with
17 them and when asked what alcohol test I elected, advised that I chose blood to be drawn and tested
18 since it was the most accurate methodology. I was then convinced that there was no alcohol in my
19 system. I was wrong, and my blood alcohol subsequently proved to be approximately 0.05%PPM.
20 When confronted with this information I checked the Ferrous Sulfate Elixir and discovered that not
21 only did it contain alcohol, but the dosage was one ounce per day, not the eight I had been
22 consuming.

23 10. Concerned that the medication regiment was inappropriate and particularly its apparent
24 lack of efficacy in treating my ulcers and anemia, I consulted with and transferred my treatment to a
25 different physician who in turn put me through an extreme battery of tests, physical and
26 psychological, and as a result modified the prescription medicine plan by removing and substituting
27 various medications, in particular, the Ferrous Sulfate Elixir was eliminated and I have not used it
28

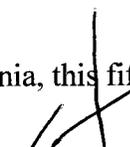
1 since. Before entering a plea to the charges in court I immediately entered and enrolled in San
2 Diego State University's eighteen-month Chemical Abuse Program, paid the \$1,710 tuition and on
3 May 20th commenced taking classes which required five plus hours per week of attendance.
4 Concurrently I commenced attending at least weekly meetings of Alcoholics Anonymous self-help
5 sessions. I attended classes in both institutions religiously, and I continue to do so to the present.

6 11. On July 29th, I pled guilty, received a fine of \$2,635.00, was required to attend and
7 attended the MADD (Mothers Against Drunk Driving) program, was ordered confined and was
8 confined four days, and had my drivers' license suspended for one year.

9 12. I have undergone, and still am undergoing, intense medical intervention to address
10 the underlined medical rehabilitation issues that resulted in the convictions. This course of treatment
11 has included a change of doctors, a change in my medication regime, psychotherapy, intense
12 testing, counseling, and support actions.

13 The undersigned hereby declares: that I have read the foregoing "Declaration of Douglas D
14 Holthaus in Support of Response to Notice of Hearing on Conviction" and the same is true of my
15 knowledge and belief except for matters therein stated, if any, upon matters of information and
16 belief, and as to those I believe them to be true. I am competent to testify and would testify to the
17 foregoing facts if sworn to do so.

18 This declaration was executed at San Diego, California, this fifth day of January 2016.

19 
20 _____
21 Douglas D. Holthaus
22 California State Bar
23 Member No.74,560
24
25
26
27
28

DECLARATION OF SERVICE BY FIRST-CLASS MAIL

SAN DIEGO COUNTY

STATE OF CALIFORNIA

CASE NUMBER: 15-C-13232

I, Brooke Maber declare:

I, the undersigned, over the age of 18 years old, whose business address and place of employment is Holthaus & Associates, 419 La Crescentia Drive, San Diego, California 92106, declare that I am a resident of San Diego County; I am not a party to the within-entitled action. In accordance to business practice for collection and processing of mail, I deposited or placed for collection and mailing in the city and county of San Diego, on the date shown below, an original of the within.

RESPONSE TO NOTICE OF HEARING OF CONVICTION

DECLARATION OF DOUGLAS D. HOLTHAUS IN SUPPORT OF RESPONSE TO NOTICE OF HEARING OF CONVICTION

by placing an original thereof, and one copy, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Diego, California, addressed as follows:

ADRIANA BURGER
DEPUTY TRIAL COUNSEL
OFFICE OF ENFORCEMENT
845 South Figueroa Street
Los Angeles, California 90017-2515

I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Date: 1/5/16

Brooke Maber

Signature of Declarant

Brooke Maber

Type or Print Full Name of Declarant