

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 PATRICK M. KENADY  
Deputy Attorney General  
4 State Bar No. 050882  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 324-5377  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **RITA BERNAL**  
13 **4960 N. Teilman**  
14 **Fresno, Ca. 93705**  
**Pharmacy Technician Registration No. TCH 54691**

15 Respondent.

Case No. 3524

**DEFAULT DECISION  
AND ORDER**

[Gov. Code, §11520]

16  
17 FINDINGS OF FACT

18 1. On or about August 23, 2010, Complainant Virginia Herold, in her official capacity  
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
20 Accusation No. 3524 against Rita Bernal (Respondent) before the Board of Pharmacy.

21 (Accusation attached as Exhibit A.)

22 2. On or about March 2, 2004, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 54691 to Respondent. The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 July 31, 2011, unless renewed.

26 3. On or about September 24, 2010, Respondent was served by Certified and First Class  
27 Mail copies of the Accusation No. 3524, Statement to Respondent, Notice of Defense, and  
28 Request for Discovery at Respondent's address of record which, pursuant to Business and

1 Professions Code section 136 and/or agency specific statute or regulation, is required to be  
2 reported and maintained with the Board, which was and is: 4960 N. Teilman, Fresno, CA 93705.

3 4. Service of the Accusation was effective as a matter of law under the provisions of  
4 Government Code section 11505, subdivision (c) and/or Business & Professions Code section

5 5. Government Code section 11506 states, in pertinent part:

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
7 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
8 of the accusation not expressly admitted. Failure to file a notice of defense shall  
9 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
10 may nevertheless grant a hearing.

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of  
12 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3524.

13 7. California Government Code section 11520 states, in pertinent part:

14 (a) If the respondent either fails to file a notice of defense or to appear at the  
15 hearing, the agency may take action based upon the respondent's express admissions  
16 or upon other evidence and affidavits may be used as evidence without any notice to  
17 respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board finds  
19 Respondent is in default. The Board will take action without further hearing and, based on the  
20 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,  
21 as well as taking official notice of all the investigatory reports, exhibits and statements contained  
22 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3524,  
23 finds that the charges and allegations in Accusation No. 3524, are found to be true.

24 9. Taking official notice of its own internal records, pursuant to Business and  
25 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
26 and Enforcement is \$1,190.00 as of December 9, 2010.

#### 27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Rita Bernal has subjected her  
Pharmacy Technician Registration No. TCH 54691 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

///

1 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician  
2 Registration based upon the following violations alleged in the Accusation which are supported  
3 by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

- 4 a. Business and Professions Code section 4301 (k) (l) (Criminal Conviction).
- 5 b. Business and Professions Code section 4301 (h) (Use of Alcoholic Beverages).

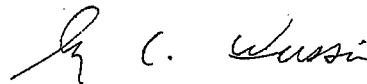
6 ORDER

7 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 54691, heretofore  
8 issued to Respondent Rita Bernal, is revoked.

9 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
10 written motion requesting that the Decision be vacated and stating the grounds relied on within  
11 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
12 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

13 This Decision shall become effective on April 15, 2011.

14 It is so ORDERED March 16, 2011.

15 

16  
17 \_\_\_\_\_  
18 STANLEY C. WEISSER, BOARD PRESIDENT  
19 FOR THE BOARD OF PHARMACY  
20 DEPARTMENT OF CONSUMER AFFAIRS

21 10641562.DOC  
22 DOJ Matter ID:SA2009103082

23 Attachment:  
24 Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
3 PATRICK M. KENADY  
Deputy Attorney General  
4 State Bar No. 050882  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
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8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:  
12 **RITA BERNAL**  
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13 **Fresno, Ca. 93705**  
**Pharmacy Technician Registration No. TCH**  
14 **54691**  
15 Respondent.

Case No. 3524

**A C C U S A T I O N**

16  
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about March 2, 2004, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 54691 to Rita Bernal (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on July 31, 2011, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code states:

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

3 ...

4 5. Section 4301 of the Code states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional  
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

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

14 ...

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

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the  
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
6 indictment.

7 6. California Code of Regulations, title 16, section 1770, states:

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

14 7. Section 118, subdivision (b), of the Code provides that the  
15 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of  
16 jurisdiction to proceed with a disciplinary action during the period within which the license may  
17 be renewed, restored, reissued or reinstated.

18 8. Business and Professions Code section 125.3 states that:

19 "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary  
20 proceeding before any board within the department or before the Osteopathic Medical Board  
21 upon request of the entity bringing the proceedings, the administrative law judge may direct a  
22 licentiate found to have committed a violation or violations of the licensing act to pay a sum not  
23 to exceed the reasonable costs of the investigation and enforcement of the case.

24 ...

25 FIRST CAUSE FOR DISCIPLINE  
26 (CRIMINAL CONVICTION)

27 9. Respondent is subject to disciplinary action under section 4301 (k)(1) in that on or  
28 about August 7, 2006, in a criminal proceeding entitled *People v. Rita Bernal* in Fresno County

1 Superior Court, Case Number T06903832-4, Respondent was convicted by a plea of no contest  
2 for violating Vehicle Code section 23152(b) (drunk driving) with a blood alcohol content of .15  
3 percent or higher (Vehicle Code section 23578) with a prior conviction (Vehicle Code section  
4 23540) and Vehicle Code section 23152 (with a minor under the age of 14 years as a passenger),  
5 misdemeanors. Respondent was given a suspended sentence, three years of probation and 90  
6 days county jail with 70 days stayed. The conviction is substantially related to the qualifications,  
7 functions or duties as a registrant.

8 SECOND CAUSE FOR DISCIPLINE

9 (CRIMINAL CONVICTION)

10 10. Respondent is subject to disciplinary action under section 4301 (k)(1) in that on or  
11 about February 21; 2007, in a criminal proceeding entitled *People v. Rita Bernal* in Fresno  
12 County Superior Court Case Number M07910810, Respondent was convicted by a plea of for  
13 violation Vehicle Code section 23152(b)(drunk driving) with a prior conviction (Vehicle Code  
14 section) and a blood alcohol level of .15 percent or higher (Vehicle Code section) and Vehicle  
15 Code section 14601.2 (driving while license suspended for prior DUI), all misdemeanors.  
16 Sentence was suspended with three years of probation with 120 days in county jail with 90 days  
17 suspended and a fine of \$1500, to run concurrent with the prior conviction.

18 THIRD CAUSE FOR DISCIPLINE

19 (USE OF ALCOHOLIC BEVERAGES)

20 11. Respondent is subject to disciplinary action under section 4301 (h) in that she used  
21 alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a  
22 person holding a license under this chapter, or to any other person or to the public, or to the extent  
23 that the use impairs the ability of the person to conduct with safety to the public the practice  
24 authorized by the license as described in paragraphs 9 and 10 above.

25 PRAYER

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

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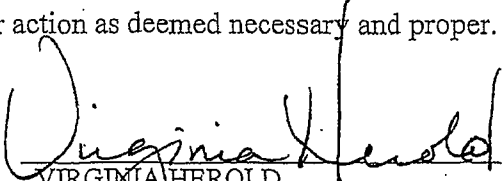
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1. Revoking or suspending Pharmacy Technician Registration Number TCH 54691,  
issued to Rita Bernal;

2. Ordering RITA BERNAL 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: 8/23/10



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

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