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

10 In the Matter of the Accusation Against:

Case No. 3583

OAH No. L-2011110213

11 **RICHARD GILBERT AGUILAR**

DEFAULT DECISION AND ORDER

12 **944 W. 25th Street**

13 **San Bernardino, CA 92405**

14 **Pharmacy Technician Registration No. TCH**
15 **61872**

[Gov. Code, §11520]

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about June 6, 2011, Complainant Virginia Herold, in her official capacity as the
19 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
20 No. 3583 against Richard Gilbert Aguilar ("Respondent") before the Board of Pharmacy.

21 2. On or about April 6, 2005, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician Registration No. TCH 61872 to Respondent. The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 3583
24 and will expire on May 31, 2012, unless renewed.

25 3. On or about June 15, 2011, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. 3583, Statement to Respondent, Notice of Defense, Request for
27 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
28 Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 is required to be reported and maintained with the Board. Respondent's address on record with
2 the Board was and is: 944 W. 25th Street, San Bernardino, CA 92405.

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 Business & Professions Code section 124.

5 5. On or about June 27, 2011, Respondent signed and returned a Notice of Defense,
6 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
7 address of record and it informed him that an administrative hearing in this matter was scheduled
8 for January 30, 2012. Respondent failed to appear at that hearing.

9 6. Government Code section 11506 states, in pertinent part:

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

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
respondent.

17 8. Pursuant to its authority under Government Code section 11520, the Board finds
18 Respondent is in default. The Board will take action without further hearing and, based on the
19 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
20 taking official notice of all the investigatory reports, exhibits and statements contained therein on
21 file at the Board's offices regarding the allegations contained in Accusation No. 3583, finds that
22 the charges and allegations in Accusation No. 3583, are separately and severally, found to be true
23 and correct by clear and convincing evidence.

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 \$4,130.00 as of January 30, 2012.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Richard Gilbert Aguilar has
3 subjected his Pharmacy Technician Registration No. TCH 61872 to discipline.

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

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

8 **a. Substantially Related Convictions.** Respondent is subject to disciplinary
9 action under sections 490 and 4301, subdivision (I), of the Code, in conjunction with California
10 Code of Regulation, title 16, section 1770, in that Respondent was convicted of crimes
11 substantially related to the qualifications, functions or duties of a licensed pharmacy technician,
12 as follows:

13 i. On or about August 17, 2005, after pleading guilty, Respondent was
14 convicted of one misdemeanor count of violating Vehicle Code Section 23152(A) [driving under
15 the influence] in the criminal proceeding entitled *The People of the State of California v. Richard*
16 *Gilbert Aguilar* (Super. Ct. Los Angeles County, 2005, No. TSB117383). Respondent was
17 placed on probation for 36 months, was ordered to attend a First Offender alcohol program and to
18 pay a fine. The circumstances that give rise to the conviction are as follows: on or about April 2,
19 2005, Respondent was stopped by a County of San Bernardino Sheriff's Department deputy for
20 speeding. When the deputy made contact with Respondent, he observed that the Respondent had
21 an odor of an alcoholic beverage on his breath and/or person, his eyes were bloodshot and watery
22 and his speech was slurred and confused. Respondent admitted to the deputy that he had
23 consumed four (4) 12 ounce beers. Respondent submitted to a breathalyzer test. His results
24 measured 0.18 Blood Alcohol Content (BAC).

25 ii. On or about January 14, 2009, after pleading guilty, Respondent was
26 convicted of one misdemeanor count of violating Vehicle Code Section 23152(B) [driving under
27 the influence with a blood alcohol content of over 0.08 percent] in the criminal proceeding
28 entitled *The People of the State of California v. Richard Aguilar* (Super. Ct. Los Angeles County,

2009, No. TSB701809). Respondent was ordered to serve 120 days in a San Bernardino County Jail facility, was placed on probation for 36 months, and was ordered to attend a Multiple Offender alcohol program and to pay a fine. The circumstances that give rise to the conviction are as follows: on or about April 13, 2007, an officer with the San Bernardino Police Department stopped Respondent while he was driving his vehicle. When the officer made contact with Respondent, he observed that the Respondent's eyes were bloodshot and watery, that his speech was slow and slurred and that his movements were very slow. Respondent admitted to the officer that he had consumed six (6) or seven (7) beers. Respondent submitted to a breathalyzer test. His results measured 0.169 and 0.165 BAC.

iii. On or about January 14, 2009, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code Section 23152(B) [driving under the influence with a blood alcohol content of over 0.08 percent] in the criminal proceeding entitled *The People of the State of California v. Richard Aguilar* (Super. Ct. Los Angeles County, 2009, No. TSB702315). Respondent was sentenced to serve 120 days in a San Bernardino County Jail facility, was placed on probation for 36 months, and was ordered to attend a Multiple Offender alcohol program and to pay a fine. The sentence ran concurrently with his sentence for Case No. TSB701809, referenced above. The circumstances that give rise to the conviction are as follows: on or about July 27, 2007, an officer with the Colton Police Department stopped Respondent while he was driving his vehicle at a high rate of speed. When the officer made contact with Respondent, he observed that Respondent's eyes appeared to be bloodshot and watery and that his speech was slurred. The officer also noticed that Respondent had a "12-pack" of Corona beer sitting on the front passenger seat of the vehicle. The officer observed that four of the beer bottles were empty and that they were also cold to the touch. The officer administered three Field Sobriety Tests (F.S.T.s) to Respondent. Respondent was unable to follow the directions or instructions for the F.S.T.s. Respondent submitted to a Preliminary Alcohol Screening (PAS) test. The breath samples collected by the officer registered 0.106% BAC. Respondent admitted to the officer that he had an alcohol problem and that he had consumed

1 approximately four 12-ounce Corona beers. Respondent also admitted to driving at a speed of 55
2 mph.

3 **b. Dangerous Use of Alcohol.** Respondent is subject to disciplinary action under
4 section 4301, subdivision (h), of the Code, in that he used alcohol beverages to the extent or in a
5 manner as to be dangerous or injurious to himself. Complainant refers to, and by this reference
6 incorporates, the allegations set forth in paragraph 3, subparagraphs (a)(i-iii), inclusive, above, as
7 though set forth fully.

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3 **ORDER**

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 61872, heretofore
5 issued to Respondent Richard Gilbert Aguilar, is revoked.

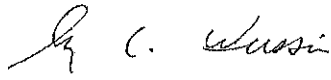
6 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
7 written motion requesting that the Decision be vacated and stating the grounds relied on within
8 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
9 vacate the Decision and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

10 This decision shall become effective on June 11, 2012.

11 It is so ORDERED on May 10, 2012.

12 BOARD OF PHARMACY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA

15 By

16 
STANLEY C. WEISSER

17 Board President

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19 DOJ Matter ID:LA2010500699
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8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 3583

11 **RICHARD GILBERT AGUILAR**
12 **944 W. 25th Street**
San Bernardino, CA 92405
13 **Pharmacy Technician Registration No. TCH**
61872

A C C U S A T I O N

14 Respondent.
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17 Complainant alleges:

18 **PARTIES**

19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy.

21 2. On or about April 6, 2005, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration Number TCH 61872 to Richard Gilbert Aguilar (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and expired on May 31, 2012. The license has not been renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

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 490 states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

6. 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

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3

4 "(l) The conviction of a crime substantially related to the qualifications, functions, and
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
15 of this provision. The board may take action when the time for appeal has elapsed, or the
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
20 indictment."

21 REGULATORY PROVISIONS

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

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

1 **COST RECOVERY**

2 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Substantially Related Convictions)**

8 9. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
9 (l), of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
10 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
11 of a licensed pharmacy technician, as follows:

12 a. On or about August 17, 2005, after pleading guilty, Respondent was convicted of one
13 misdemeanor count of violating Vehicle Code Section 23152(A) [driving under the influence] in
14 the criminal proceeding entitled *The People of the State of California v. Richard Gilbert Aguilar*
15 (Super. Ct. Los Angeles County, 2005, No. TSB117383). Respondent was placed on probation
16 for 36 months, was ordered to attend a First Offender alcohol program and to pay a fine.

17 b. The circumstances that give rise to the conviction are as follows: on or about April 2,
18 2005, Respondent was stopped by a County of San Bernardino Sheriff's Department deputy for
19 speeding. When the deputy made contact with Respondent, he observed that the Respondent had
20 an odor of an alcoholic beverage on his breath and/or person, his eyes were bloodshot and watery
21 and his speech was slurred and confused. Respondent admitted to the deputy that he had
22 consumed four (4) 12 ounce beers. Respondent submitted to a breathalyzer test. His results
23 measured 0.18 Blood Alcohol Content (BAC).

24 c. On or about January 14, 2009, after pleading guilty, Respondent was convicted of one
25 misdemeanor count of violating Vehicle Code Section 23152(B) [driving under the influence with
26 a blood alcohol content of over 0.08 percent] in the criminal proceeding entitled *The People of the*
27 *State of California v. Richard Aguilar* (Super. Ct. Los Angeles County, 2009, No. TSB701809).
28 Respondent was ordered to serve 120 days in a San Bernardino County Jail facility, was placed

1 on probation for 36 months, and was ordered to attend a Multiple Offender alcohol program and
2 to pay a fine.

3 d. The circumstances that give rise to the conviction are as follows: on or about April
4 13, 2007, an officer with the San Bernardino Police Department stopped Respondent while he
5 was driving his vehicle. When the officer made contact with Respondent, he observed that the
6 Respondent's eyes were bloodshot and watery, that his speech was slow and slurred and that his
7 movements were very slow. Respondent admitted to the officer that he had consumed six (6) or
8 seven (7) beers. Respondent submitted to a breathalyzer test. His results measured 0.169 and
9 0.165 BAC.

10 e. On or about January 14, 2009, after pleading guilty, Respondent was convicted of one
11 misdemeanor count of violating Vehicle Code Section 23152(B) [driving under the influence with
12 a blood alcohol content of over 0.08 percent] in the criminal proceeding entitled *The People of the*
13 *State of California v. Richard Aguilar* (Super. Ct. Los Angeles County, 2009, No. TSB702315).
14 Respondent was sentenced to serve 120 days in a San Bernardino County Jail facility, was placed
15 on probation for 36 months, and was ordered to attend a Multiple Offender alcohol program and
16 to pay a fine. The sentence ran concurrently with his sentence for Case No. TSB701809,
17 referenced above.

18 f. The circumstances that give rise to the conviction are as follows: on or about July 27,
19 2007, an officer with the Colton Police Department stopped Respondent while he was driving his
20 vehicle at a high rate of speed. When the officer made contact with Respondent, he observed that
21 Respondent's eyes appeared to be bloodshot and watery and that his speech was slurred. The
22 officer also noticed that Respondent had a "12-pack" of Corona beer sitting on the front passenger
23 seat of the vehicle. The officer observed that four of the beer bottles were empty and that they
24 were also cold to the touch. The officer administered three Field Sobriety Tests (F.S.T.s) to
25 Respondent. Respondent was unable to follow the directions or instructions for the F.S.T.s.
26 Respondent submitted to a Preliminary Alcohol Screening (PAS) test. The breath samples
27 collected by the officer registered 0.106% BAC. Respondent admitted to the officer that he had
28

1 an alcohol problem and that he had consumed approximately four 12-ounce Corona beers.

2 Respondent also admitted to driving at a speed of 55 mph.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Alcohol)**

5 10. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
6 the Code, in that he used alcohol beverages to the extent or in a manner as to be dangerous or
7 injurious to himself. Complainant refers to, and by this reference incorporates, the allegations set
8 forth in paragraph 9, subparagraphs (a) through (f), as though set forth fully.

9 **PRAYER**

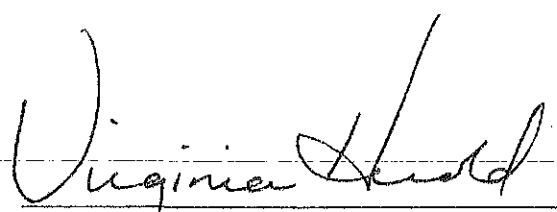
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61872,
13 issued to Richard Gilbert Aguilar

14 2. Ordering Richard Gilbert Aguilar to pay the Board of Pharmacy the reasonable costs
15 of the investigation and enforcement of this case, pursuant to Business and Professions Code
16 section 125.3;

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

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20 DATED: 6/6/11


VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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