

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

In the Matter of the Accusation Against:

GAIL ALEXANDRA MACDONALD
611 Fresno Avenue
Morro Way, CA 93442

Pharmacy Technician Registration No. TCH
28413

Respondent.

Case No. 3633

OAH No. 2012090740

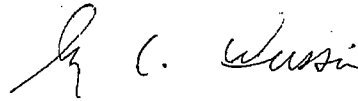
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 2, 2013.

It is so ORDERED on April 2, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in San Luis Obispo, California on February 12, 2013.

Christina Thomas, Deputy Attorney General, represented Complainant.

The Accusation was served and due notice of the time and place for hearing was given as required by the Government Code. There was no appearance by or on behalf of Gail Alexandra MacDonald (Respondent) and the matter proceeded by way of a default hearing.

Evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision:

FINDINGS OF FACT

1. Virginia Herold signed the Accusation in her capacity as the Executive Officer of the Board of Pharmacy (Board).
2. The Board issued Pharmacy Technician Registration number TCH 28413 to Respondent on February 17, 1999. The registration has been renewed through May 31, 2014.
3. On December 5, 2006, in the Superior Court of the State of California, County of San Luis Obispo, case number M000395480, the court convicted Respondent on her nolo contendere plea to one misdemeanor count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content (BAC) of 0.08 percent or higher (actual BAC measured 0.21 percent). The court placed Respondent on probation for three years on condition that she serve four days in jail, attend a first offender alcohol program, and pay fines and fees totaling \$1,648.

4. On July 17, 2007, in the Superior Court of the State of California, County of San Luis Obispo, case number M000405214, the court convicted Respondent on her nolo contendere plea to one misdemeanor count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher (actual BAC measured 0.166 percent). The court found this conviction to be a violation of the probation described in Finding 3. The court ordered Respondent's probation to be extended for an additional three years on condition that she serve 30 days in jail, attend a second offender alcohol program, and pay fines and fees totaling \$3,343.

5. On May 21, 2008, in the Superior Court of the State of California, County of San Luis Obispo, case number M000417071, the court convicted Respondent on her nolo contendere plea to one misdemeanor count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher (actual BAC measured 0.27 percent). The court continued Respondent's probation on condition that she serve 210 days in jail, attend a second offender alcohol program, and pay fines and fees totaling \$1,971.

6. On December 13, 2010, in the Superior Court of the State of California, County of San Luis Obispo, case number F000452974, the court convicted Respondent on her nolo contendere plea to one felony count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of 0.08 percent or higher (actual BAC measured 0.245 percent and 0.259 percent on readings taken two minutes apart). The court placed Respondent on formal felony probation through December 13, 2013, on condition that she serve 285 days in jail with credit for 84 days served (56 days in custody and 28 days of good time/work time). The court also suspended Respondent's driver's license for four years, ordered her to pay fines and fees totaling \$2,923, designated her as a habitual traffic offender, ordered her to attend a second offender alcohol program, and ordered her to live in a sober living facility for six months.

7. The Board reasonably incurred expenses, including fees of the Attorney General, in the sum of \$3,860 in connection with the investigation and prosecution of this matter.

CONCLUSIONS OF LAW

1. Business and Professions Code section 490 provides, in part:

(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.

2. Business and Professions Code section 4301 provides, in part:

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

[¶] . . . [¶]

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

[¶] . . . [¶]

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

3. California Code of Regulations, title 16, section 1770, provides:

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

4. Respondent's multiple drunk-driving convictions, as set forth in Findings 3 through 6, subject Respondent's registration to discipline under the forgoing statutes and regulation. Her licensed capacity, coupled with her apparent inability to control her alcohol abuse, pose a clear and immediate threat to the health, safety and welfare of the people of this state.

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5. The Board is entitled to recover from Respondent its reasonable costs of prosecution of this matter in the sum of \$3,860 under the provisions of Business and Professions Code section 125.3, by reason of Finding 7.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Pharmacy Technician Registration number TCH 28413 issued to Gail Alexandra MacDonald, together with all licensing rights appurtenant thereto, are revoked.
2. Gail Alexandra MacDonald shall pay to the Board the sum of \$3,860 at such time and in such manner as the Board, in its discretion, may require.

Date: 3-1-13



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings

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

10 In the Matter of the Accusation Against:

Case No. 3633

11 **GAIL ALEXANDRA MACDONALD**
12 **9110 Montecito St., A**
13 **Atascadero, CA 93442**
14 **Pharmacy Technician Registration No. TCH**
28413

ACCUSATION

15 Respondent.

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 February 17, 1999, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 28413 to Gail Alexandra MacDonald (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on May 31, 2012, 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 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 "(k) The conviction of more than one misdemeanor or any felony involving the use,
5 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
6 combination of those substances.

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

24 **REGULATORY PROVISION**

25 8. California Code of Regulations, title 16, section 1770, states:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Conviction of Substantially Related Crimes)**

11 10. Respondent is subject to disciplinary action under sections 490 and 4301 subdivision
12 (l), in conjunction with California Code of Regulations section 1770, on the grounds of
13 unprofessional conduct, in that Respondent was convicted of crimes substantially related to the
14 qualifications, functions or duties of a pharmacy technician. The circumstances are as follows:

15 a. On or about December 13, 2010, Respondent, in San Luis Obispo County Superior
16 Court Case No. F000452974, plead nolo contendere to a felony violation of Vehicle Code section
17 23152(B) [driving under the influence with a BAC of .08% or higher]. Respondent also admitted
18 felony violations of Vehicle Code sections 23538(B)(2) [Excessive Blood Alcohol over .20] and
19 23152(A) [driving under the influence of alcohol/drugs]. Respondent was sentenced to 280 days
20 in jail; three (3) years formal probation; drivers license suspended for four (4) years; was
21 designed a habitual traffic offender; ordered to attend and complete second offender DUI
22 program; ordered to reside in a sober living facility for six months; and pay a \$1855 fine in
23 addition to court fees. The circumstances of the conviction are that on or about October 18, 2010,
24 Respondent operated her vehicle while under the influence of alcohol and drugs. Respondent's
25 blood alcohol content at the time of her arrest was .245 and .259. At the time of Respondent's
26 arrest, she was on probation for a previous DUI conviction and her drivers license was suspended.

27 b. On or about May 21, 2008, Respondent, in San Luis Obispo County Superior Court
28 Case No. M000417071, plead nolo contendere to a misdemeanor violation of Vehicle Code

1 section 23152(b) [Driving under the Influence with a BAC of .08% or higher]. Respondent was
2 ordered to serve 210 days in jail; placed on formal probation for a period of three years; required
3 to complete a Second Offender Alcohol Program; and pay a fine of \$1971.00. The circumstances
4 of the conviction are that on or about April 27, 2008, Respondent operated her vehicle while
5 under the influence of alcohol. Respondent's blood alcohol content at the time of her arrest was
6 .27. At the time of Respondent's arrest, she was on probation for a previous DUI conviction and
7 her drivers license was suspended.

8 c. On or about July 17, 2007, Respondent, in San Luis Obispo County Superior Court
9 Case No. M000405214, plead nolo contendere to a misdemeanor violation of Vehicle Code
10 section 23152(b) [Driving under the Influence with a BAC of .08% or higher]. Respondent was
11 order to serve 30 days in jail; placed on formal probation for a period of three (3) years; ordered
12 to complete a Second Offender Alcohol Program; and pay a fine of \$3343.00. The circumstances
13 of the conviction are that on or about June 23, 2007, Respondent operated her vehicle while under
14 the influence of alcohol. Respondent's blood alcohol content at the time of her arrest was .166.
15 At the time of Respondent's arrest, she was on probation for a previous DUI conviction.

16 d. On or about December 5, 2006, Respondent, in San Luis Obispo County Superior Court
17 Case No. M000395480, plead nolo contendere to a misdemeanor violation of Vehicle Code
18 section 23152(b) [Driving under the Influence with a BAC of .08% or higher]. Respondent was
19 order to serve 4 days in jail; placed on formal probation; ordered to complete a First Offender
20 Alcohol Program; and pay a fine of \$1648.00. The circumstances of the conviction are that on or
21 about November 1, 2006, Respondent operated her vehicle while under the influence of alcohol.

22 SECOND CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct – Dangerous Use of Alcohol/Drugs)

24 11. Respondent is subject to disciplinary action under section 4301(h), on the grounds of
25 unprofessional conduct, in that Respondent consumed alcohol and four separate occasions and
26 then operated her motor vehicle while under the influence. Respondent used alcohol/drug in a
27 manner dangerous or injurious to herself and the public. Complainant's allegations as set forth in
28

1 paragraph 10, subparagraphs (a) through (d) are incorporated by reference as though fully set
2 forth.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Conviction of Alcohol/Drug Related Crimes)**

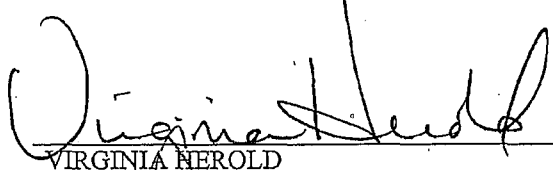
5 12. Respondent is subject to disciplinary action under section 4301 subdivision (k), on
6 the grounds of unprofessional conduct, in that Respondent was convicted of two misdemeanor
7 and two felony violations involving the use, consumption, or self-administration of alcohol.
8 Complainant's allegations as set forth in paragraph 10, subparagraphs (a) through (d) are
9 incorporated by reference as though fully set forth.

10
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 28413,
15 issued to Gail Alexandra MacDonald;
- 16 2. Ordering Gail Alexandra MacDonald to pay the Board of Pharmacy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21
22 DATED: 3/19/12


23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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