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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. 3646

11 **BRANDON CARLISLE LOCKE**
12 2808 Dore Dr.
13 Bakersfield, CA 93304
14 **Pharmacy Technician License No. 77299**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Respondent.

16 FINDINGS OF FACT

17 1. On or about July 15, 2010, Complainant Virginia K. Herold, in her official capacity
18 as the Executive Officer of the Board of Pharmacy, filed Accusation No. 3646 against Brandon
19 Carlisle Locke (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

20 2. On or about September 6, 2007, the Board of Pharmacy (Board) issued Pharmacy
21 Technician License No. 77299 to Respondent. The Pharmacy Technician License was in full
22 force and effect at all times relevant to the charges brought herein and will expire on October 31,
23 2010, unless renewed.

24 3. On or about August 11, 2010, Respondent was served by Certified and First Class
25 Mail copies of the Accusation No. 3646, Statement to Respondent, Notice of Defense, Request
26 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
27 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
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1 section 136 and/or agency specific statute or regulation, is required to be reported and maintained
2 with the Board, which was and is: 2808 Dore Dr., Bakersfield, CA 93304.

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
5 124.

6 5. On or about September 22, 2010, the aforementioned documents that were sent via
7 certified mail were returned by the U.S. Postal Service marked "unclaimed."

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 3646.

17 8. California Government Code section 11520 states, in pertinent part:

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board offices regarding the allegations contained in Accusation No. 3646, finds that the
27 charges and allegations in Accusation No. 3646, are separately and severally, found to be true and
28 correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$3,142.50 as of October 5, 2010.

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Brandon Carlisle Locke has
3 subjected his Pharmacy Technician License No. 77299 to discipline.

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

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

8 a. Business and Professions Code sections 4301, subdivision (l) and 490 convicted of
9 substantially related crimes (Vehicle Code section 23152, subdivision (a) [driving under the
10 influence of an alcoholic beverage], and 14601.1, subdivision (a) [driving while license
11 suspended]; Vehicle Code sections 4462.5 [giving officer unlawful registration], and 12500,
12 subdivision (a) [driving without a license]; and Penal Code sections 460, subdivision (b) [second
13 degree burglary] and 476 [make/pass fictitious check]) and

14 b. Business and Professions Code section 4301, subdivision (h) (Use of Alcohol
15 Beverages to the Extent to be Dangerous to Oneself and Others).

16 ORDER

17 IT IS SO ORDERED that Pharmacy Technician License No. 77299, heretofore issued to
18 Respondent Brandon Carlisle Locke, is revoked.

19 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
20 written motion requesting that the Decision be vacated and stating the grounds relied on within

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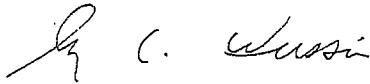
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1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on January 19, 2011.

4 It is so ORDERED December 20, 2010.

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STANLEY C. WEISSER, BOARD PRESIDENT
8 FOR THE BOARD OF PHARMACY
9 DEPARTMENT OF CONSUMER AFFAIRS

10 10616698.DOC
11 DOJ Matter ID:LA2010501491

12 Attachment:
13 Exhibit A: Accusation

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Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-5794
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 3646

13 **BRANDON CARLISLE LOCKE**
2808 Dore Dr.
Bakersfield, CA 93304

A C C U S A T I O N

14 **Pharmacy Technician License No. 77299**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 6, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. 77299 to Brandon Carlisle Locke (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on October 31, 2010, unless renewed.

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

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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 PROVISIONS

25 7. 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 8. Section 125.3 of the Code provides, 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 **(Criminal Convictions)**

11 9. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
12 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
13 that Respondent was convicted of crimes substantially related to the qualifications, functions or
14 duties of a licensed pharmacy technician, as follows:

15 a. On or about March 11, 2008, after pleading nolo contendere, Respondent was
16 convicted of violating Vehicle Code section 23152, subdivision (a) [driving under the influence
17 of an alcoholic beverage], and 14601.1, subdivision (a) [driving while license suspended],
18 misdemeanors, in the criminal proceeding entitled *People of the State of California vs. Brendan*
19 *Carlisle Locke* (Super. Ct. Kern County, 2008, No. BM726313A). The Court sentenced
20 Respondent to three years probation and ten days in jail and fined.

21 b. The circumstances surrounding the conviction are that on or about February 16, 2008,
22 the California Highway Patrol stopped Respondent for traveling at a high rate of speed. During
23 the stop, officers' noticed signs of intoxication. Respondent's eyes were red and watery and he
24 had slurred speech. The officer was able to smell an odor of an alcohol beverage emitting from
25 within the vehicle. A driver's check revealed that Respondent's license was suspended.
26 Respondent performed several field sobriety tests unsuccessfully. Consequently, he was arrested
27 for driving a vehicle while under the influence of alcohol and/or drugs. The result of
28 Respondent's chemical breath test was 0.15 BAC.

1 c. On or about August 1, 2008, after pleading nolo contendere, Respondent was
2 convicted of violating Vehicle Code sections 4462.5 [giving officer unlawful registration], and
3 12500, subdivision (a) [driving without a license], misdemeanors, in the criminal proceeding
4 entitled *The People of the State of California vs. Brandon Carlisle Locke* (Super. Ct. Kern
5 County, 2008, No. BM730933A). The Court ordered Respondent to pay fines.

6 d. The circumstances surrounding the conviction are that on or about April 16, 2008,
7 Bakersfield Police stopped Respondent for driving without a license and not providing proper
8 vehicle registration.

9 e. On or about January 12, 2009, after pleading nolo contendere, Respondent was
10 convicted of violating Penal Code sections 460, subdivision (b) [second degree burglary] and 476
11 [make/pass fictitious check], misdemeanors, in the criminal proceeding entitled *People of the*
12 *State of California vs. Brendan Carlisle Locke* (Super. Ct. Kern County, 2009, No. BM744872A).
13 The Court sentenced Respondent to three years probation and 30 days in jail and fined.

14 f. The circumstances surrounding the conviction are that on or about January 8, 2009,
15 Respondent presented a Wells Fargo bank teller with a \$500 personal check and his California
16 identification card. The checks belonged to D.R. The bank teller contacted D.R. who denied
17 writing a check to Respondent. Respondent had in his possession an additional blank check
18 belonging to D.R. Respondent was subsequently arrested for writing checks with intent to
19 defraud and commercial burglary.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Use of Alcohol Beverages to the Extent to be Dangerous to Oneself)**

22 10. Respondent is subject to disciplinary action under section 4301, subdivision (h), of
23 the Code, on the grounds of unprofessional conduct, in that on or about February 16, 2008,
24 Respondent used and consumed alcoholic beverages to the extent or in a manner as to be
25 dangerous and injurious to himself and others, as set forth in paragraph 9, above.

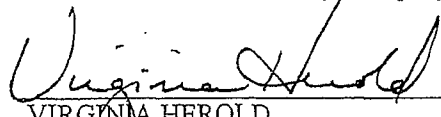
26 **PRAYER**

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

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1. Revoking or suspending Pharmacy Technician License No. 77299, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/15/10



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

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