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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. 3720

11 **AZUL M. ANSELMO**  
12 **183 Camelia Drive**  
13 **Daly City, CA 94015**  
14 **Pharmacy Technician License No. TCH**  
15 **75317**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

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17  
18 FINDINGS OF FACT

19 1. On or about September 16, 2010, Complainant Virginia Herold, in her official  
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
21 filed Accusation No. 3720 against Azul M. Anselmo (Respondent) before the Board of Pharmacy.  
22 (Accusation attached as Exhibit A.)

23 2. On or about July 14, 2007, the Board of Pharmacy (Board) issued Pharmacy  
24 Technician License No. TCH 75317 to Respondent. The Pharmacy Technician License was in  
25 full force and effect at all times relevant to the charges brought in Accusation No. 3720 and will  
26 expire on May 31, 2011, unless renewed.

1           3.     On or about September 16, 2010, Respondent was served by Certified and First Class  
2 Mail copies of Accusation No. 3720, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board, which was and is:

6     183 Camelia Drive  
7     Daly City, CA 94015.

8           4.     Service of the Accusation was effective as a matter of law under the provisions of  
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
10 124.

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

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

17          6.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
19 3720.

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

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

25          8.     Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on the  
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
file at the Board's offices regarding the allegations contained in Accusation No. 3720, finds that  
the charges and allegations in Accusation No. 3720, are separately and severally, found to be true  
and correct by clear and convincing evidence.



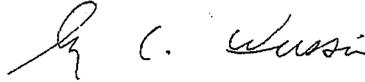
ORDER

1  
2 IT IS SO ORDERED that Pharmacy Technician License No. TCH 75317, issued to  
3 Respondent Azul M. Anselmo, is revoked.

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

8 This Decision shall become effective on June 22, 2011.

9 It is so ORDERED May 23, 2011.

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12 STANLEY C. WEISSER, BOARD PRESIDENT  
13 FOR THE BOARD OF PHARMACY  
14 DEPARTMENT OF CONSUMER AFFAIRS

15 90184597.DOC  
16 DOJ Matter ID:SF2010201154

17 Attachment:  
18 Exhibit A: Accusation  
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# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 TIMOTHY J. MCDONOUGH  
Deputy Attorney General  
4 State Bar No. 235850  
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5 P.O. Box 70550  
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6 Telephone: (510) 622-2134  
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7 E-mail: Tim.McDonough@doj.ca.gov  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3720

12 **AZUL M. ANSELMO**  
13 **183 Camelia Drive**  
14 **Daly City, CA 94015**  
**Pharmacy Technician License No. TCH**  
15 **75317**

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

16 Respondent.

17  
18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 14, 2007, the Board of Pharmacy issued Pharmacy Technician  
24 License Number TCH 75317 to Azul M. Anselmo (Respondent). The Pharmacy Technician  
25 License was in full force and effect at all times relevant to the charges brought here and will  
26 expire on May 31, 2011, unless renewed.  
27  
28

1 JURISDICTION

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both  
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances  
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. Section 4300(a) of the Code provides that every license issued by the Board may be  
9 suspended or revoked.

10 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,  
11 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
12 disciplinary action during the period within which the license may be renewed, restored, reissued  
13 or reinstated.

14 STATUTORY AND REGULATORY PROVISIONS

15 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action  
16 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but  
17 not be limited to, any of the following:

18 ...

19 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
21 whether the act is a felony or misdemeanor or not.

22 ...

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

28 ...

1 (j) The violation of any of the statutes of this state or of the United States regulating  
2 controlled substances and dangerous drugs.

3  
4 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
5 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 8. California Code of Regulations, title 16, section 1770, states:

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

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1           9.     Section 4060 of the Code states:

2           "No person shall possess any controlled substance, except that furnished to a person upon  
3 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
4 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
5 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
6 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
7 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
8 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
9 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
10 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
11 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
12 labeled with the name and address of the supplier or producer.

13           Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
14 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
15 devices."

16           10.    Section 4022 of the Code states:

17           "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, and  
18 includes the following:

19           "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without  
20 prescription," "Rx only," or words of similar import.

21           (b) Any device that bears the statement: "Caution: federal law restricts this device to sale  
22 by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled  
23 in with the designation of the practitioner licensed to use or order use of the device.

24           (c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
25 prescription or furnished pursuant to Section 4006."

26           11.    Section 490 of the Code states, in pertinent part:

27           "(a) In addition to any other action that a board is permitted to take against a licensee, a  
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
2 or profession for which the license was issued.

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

7 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
11 made suspending the imposition of sentence, irrespective of a subsequent order under the  
12 provisions of Section 1203.4 of the Penal Code.”

### 13 COST RECOVERY

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

### 18 DRUGS

19 13. Marijuana is a Schedule I controlled substance as designated by Health and Safety  
20 Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions  
21 Code section 4022. It is a hallucinogenic drug.

22 14. Hydrocodone is a Schedule II controlled substance as designated by Health and  
23 Safety Code section 11055(b)(1)(j), and a dangerous drug as designated by Business and  
24 Professions Code section 4022.

25 15. Methylenedioxymethamphetamine (MDMA) is a Schedule I controlled substance as  
26 designated by Health and Safety Code section 11054(d)(4), and a dangerous drug as designated  
27 by Business and Professions Code section 4022. It is a hallucinogenic drug.

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**FOURTH CAUSE FOR DISCIPLINE**  
**(Unprofessional Conduct)**  
**(Bus. & Prof. Code § 4301(j))**

26. Complainant realleges the allegations contained in paragraphs 22 and 23 above, and incorporates them by reference as if fully set forth.

27. Respondent has subjected his pharmacy technician license to disciplinary action under Code section 4301(j) in that on May 24, 2009, Respondent admitted to being under the influence of controlled substances and dangerous drugs. Specifically, he admitted to family members that he took cocaine, methamphetamine, and ecstasy. Further he admitted to consuming a number of alcoholic beverages before the incident with family members began.

**FIFTH CAUSE FOR DISCIPLINE**  
**(Unprofessional Conduct-Conviction)**  
**(Bus. & Prof. Code §§ 4301(l) and 490)**

28. Complainant realleges the allegations contained in paragraphs 22 and 23 above, and incorporates them by reference as if fully set forth.

29. Respondent has subjected his license to discipline under Code sections 4301(l) and 490 in that on or about July 23, 2009, in a criminal proceeding entitled *The People of the State of California v. Azul Anselmo*, in the San Mateo Superior Court, Case Number NM 386018A, Respondent was convicted by a plea of nolo contendere of one count of violating California Penal Code 417(a)(1) (exhibiting a deadly weapon that was not a firearm), a misdemeanor. Respondent was sentenced to serve 16 days in jail, followed by one year of summary probation, and ordered to pay fines and fees.

**DECEMBER 12, 2009 ARREST**

30. On December 12, 2009, Respondent, while intoxicated, arrived at his girlfriend's (victim) home. After the victim let Respondent into the house, he became angry, twisted the victim's arm and choked her with a hair tie. Respondent then pushed the victim and punched her in the arm twice. The victim was able to yell for her father who telephoned for help. Respondent was arrested for violation of Penal Code 245(a)(1) (Force/Assault with a deadly weapon: Great bodily injury likely) and 243(e)(1) (Battery on spouse/person in dating relationship).

