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

In the Matter of the Accusation Against:
DAVID GIANNI RAINES
16526 Karen Road
Madera, California 93638
Pharmacy Technician Registration
No. TCH 42827
Respondent.

Case No. 3906

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 27, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3906 (Accusation) against David Gianni Raines (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 1, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 42827 (License) to Respondent. The License was in full force and effect at all times relevant to the charges brought in the Accusation and will expire on December 31, 2011, unless renewed.

3. On or about June 2, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at 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, which was and is: 16526 Karen Rd.,
2 Madera, CA 93638.

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. Government Code section 11506 states, in pertinent part:

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts
9 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.

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
11 of the Accusation, and therefore waived his right to a hearing on the merits of the Accusation.

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

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

16 8. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
19 taking official notice of all the investigatory reports, exhibits and statements contained therein on
20 file at the Board's offices regarding the allegations contained in the Accusation, finds that the
21 charges and allegations in the Accusation, are separately and severally, found to be true and
22 correct by clear and convincing evidence.

23 9. Taking official notice of its own internal records, pursuant to Business and
24 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
25 and Enforcement is \$892.50 as of August 26, 2011.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent David Gianni Raines has
28 subjected his Pharmacy Technician License No. TCH 42827 to discipline.

- 1 2. The agency has jurisdiction to adjudicate this case by default.
- 2 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
- 3 License based upon the following violations alleged in the Accusation which are supported by the
- 4 evidence contained in the Default Decision Evidence Packet in this case.:
- 5 a. Business and Professions Code section 4301, subdivision (h), use of alcoholic
- 6 beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a
- 7 person holding a license, or to any other person or to the public, or to the extent that
- 8 the use impairs the ability of the person to conduct with safety to the public the
- 9 practice authorized by the license.

10 ORDER

11 IT IS SO ORDERED that Pharmacy Technician License No. TCH 42827, heretofore issued

12 to Respondent David Gianni Raines, is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a

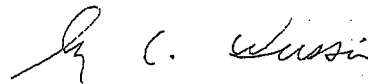
14 written motion requesting that the Decision be vacated and stating the grounds relied on within

15 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

16 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

17 This Decision shall become effective on January 11, 2012.

18 It is so ORDERED December 12, 2011.

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21 _____

22 STANLEY C. WEISSER, BOARD PRESIDENT

23 FOR THE BOARD OF PHARMACY

24 DEPARTMENT OF CONSUMER AFFAIRS

24 10745038.DOC
DOJ Matter ID:SA2010103170

25 Attachment:
26 Exhibit A: Accusation

27

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Exhibit A

Accusation

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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
13 **DAVID GIANNI RAINES**
16526 Karen Road
14 Madera, California 93638
15 **Pharmacy Technician Registration**
No. TCH 42827
16 Respondent.

Case No. 3906

ACCUSATION

17
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 August 1, 2002, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 42827 to David Gianni Raines (Respondent). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2011, unless renewed.

26 ///
27 ///
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JURISDICTION

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

4. Code section 4300 states, in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Code section 4301 states, in pertinent part:

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 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.

6. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 CAUSE FOR DISCIPLINE

4 (Dangerous Use of Alcohol)

5 7. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)
6 in that Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or
7 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
8 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
9 the public the practice authorized by the license. The circumstances are as follows:

10 8. On or about April 24, 2010, Respondent was arrested for a violation of Vehicle Code
11 sections 23152, subdivision (a) (driving under the influence of alcohol or drugs); and 23152,
12 subdivision (b) (driving with a blood alcohol level of 0.08% or more), both misdemeanors. The
13 circumstances of the arrest are that while on a routine patrol, Officer Jeremy Maffei of the Fresno
14 Police Department observed Respondent speeding and driving a vehicle without a license plate.
15 Following a traffic stop, Officer Maffei detected alcohol on Respondent's breath and initiated a
16 series of field sobriety tests. Respondent failed the field sobriety tests and a preliminary alcohol
17 screening was conducted upon Respondent with a result of 0.107% blood alcohol level.

18 DISCIPLINE CONSIDERATIONS

19 9. To determine the degree of discipline, if any, to be imposed on Respondent,
20 Complainant alleges that on or about January 6, 2010, in a prior action, the Board of Pharmacy
21 issued Citation Number CI 2007 36507 and ordered Respondent to pay a fine of \$750.00. That
22 Citation is now final and is incorporated by reference as if fully set forth.

23 PRAYER

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

26 1. Revoking or suspending Pharmacy Technician License Number TCH 42827, issued
27 to David Gianni Raines;

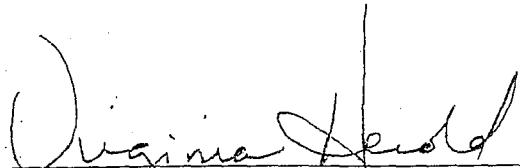
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2. Ordering David Gianni Raines to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED:

5/27/11



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

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