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

8 In the Matter of the Accusation Against:

Case No. 3966

9 **RAYMOND JOHN VILLAGOMEZ**
10 49-548 Douglas Street
11 Indio, CA 92201

DEFAULT DECISION AND ORDER

12 Pharmacy Technician Registration
13 No. TCH 85162

[Gov. Code, §11520]

Respondent.

14 **FINDINGS OF FACT**

15 1. On or about April 27, 2011, Complainant Virginia Herold, in her official capacity as
16 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
17 Accusation No. 3966 against Raymond John Villagomez (Respondent) before the Board of
18 Pharmacy. (Accusation attached as Exhibit A.)

19 2. On or about October 20, 2008, the Board of Pharmacy (Board) issued Pharmacy
20 Technician Registration No. TCH 85162 to Respondent. The Pharmacy Technician Registration
21 was in full force and effect at all times relevant to the charges brought herein and will expire on
22 September 30, 2012, unless renewed.

23 3. On or about May 4, 2011, Respondent was served by Certified and First Class Mail
24 copies of the Accusation No. 3966, Statement to Respondent, Notice of Defense, Request for
25 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
26 Respondent's address of record which, pursuant to Business and Professions Code section 4100
27 and California Code of Regulations, title 16, section 1704, is required to be reported and
28 maintained with the Board, which was and is:

1 49-548 Douglas Street
2 Indio, CA 92201

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 May 13, 2011, the aforementioned documents were returned by the U.S.
7 Postal Service marked "Return to Sender." The address on the documents was the same as the
8 address on file with the Board. Respondent failed to maintain an updated address with the Board
9 and the Board has made attempts to serve the Respondent at the address on file. Respondent has
10 not made himself available for service and therefore, has not availed himself of his right to file a
11 notice of defense and appear at hearing.

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

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 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.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 3966.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 3966, finds that

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1 the charges and allegations in Accusation No. 3966, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$672.50 as of May 23, 2011.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Raymond John Villagomez has
8 subjected his Pharmacy Technician Registration No. TCH 85162 to discipline.

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

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

13 a. Respondent has subjected his registration to discipline under sections 490 and
14 4301, subdivision (l) of the Code in that on or about February 22, 2011, in a criminal proceeding
15 entitled *People of the State of California v. Raymond John Villagomez*, in Riverside County
16 Superior Court, case number INM1100413, Respondent was convicted on his plea of guilty to
17 violating Vehicle Code section 23103, subdivision (a), reckless driving, as a result of a plea
18 agreement whereby a third count was added to the complaint. Respondent was originally charged
19 with violating Vehicle Code section 23152, subdivision (a), driving under the influence; and
20 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)
21 of .08 or higher, misdemeanors, dismissed as part of the plea agreement. Such conduct is
22 substantially related to the qualifications, duties, and functions of a pharmacy technician.

23 b. Respondent has subjected his registration to disciplinary action under section
24 4301, subdivision (h) of the Code for unprofessional conduct in that on or about October 10,
25 2010, Respondent used alcohol and was impaired by alcohol to an extent that was potentially
26 dangerous or injurious to himself, and to the public.

27 c. Respondent has subjected his registration to disciplinary action under section
28 4301, subdivision (j) of the Code in that on or about March 1, 2010, Respondent possessed

1 controlled substances illegally. Law enforcement seized from Respondent's bedroom a Glock 26
2 9mm handgun, loaded with nine live rounds in the clip, 28.5 grams of methamphetamine, a digital
3 scale, and \$1,350 in various bills of U.S. currency. Another 1.5 grams each of methamphetamine
4 that had fallen from Respondent's pocket was recovered, as well as a four-gram bundle of
5 methamphetamine in Respondent's truck.

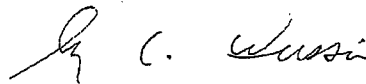
6 **ORDER**

7 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 85162, heretofore
8 issued to Respondent Raymond John Villagomez, is revoked.

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

13 This Decision shall become effective on September 15, 2011.

14 It is so ORDERED August 16, 2011.

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18 STANLEY C. WEISSER, BOARD PRESIDENT
19 FOR THE BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
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26 DOJ Matter ID: SD2011700189

27 Attachment:
28 Exhibit A: Accusation

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Exhibit A
Accusation No. 3966

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3 State Bar No. 101336
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9 **BEFORE THE**
10 **BOARD OF PHARMACY**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
12 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:	Case No. 3966
13 RAYMOND JOHN VILLAGOMEZ	A C C U S A T I O N
14 49-548 Douglas Street	
15 Indio, CA 92201	
16 Pharmacy Technician Registration	
17 No. TCH 85162	
18 Respondent.	

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 October 20, 2008, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 85162 to Raymond John Villagomez (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on September 30, 2012, unless renewed.

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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 (Code) unless otherwise indicated.

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 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

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

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

13 (j) The violation of any of the statutes of this state, or any other state, or of the
14 United States regulating controlled substances and dangerous drugs.

15 (l) The conviction of a crime substantially related to the qualifications,
16 functions, and duties of a licensee under this chapter. The record of conviction of a
17 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
18 States Code regulating controlled substances or of a violation of the statutes of this
19 state regulating controlled substances or dangerous drugs shall be conclusive
20 evidence of unprofessional conduct. In all other cases, the record of conviction shall
21 be conclusive evidence only of the fact that the conviction occurred. The board may
22 inquire into the circumstances surrounding the commission of the crime, in order to
23 fix the degree of discipline or, in the case of a conviction not involving controlled
24 substances or dangerous drugs, to determine if the conviction is of an offense
25 substantially related to the qualifications, functions, and duties of a licensee under this
26 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
27 contendere is deemed to be a conviction within the meaning of this provision. The
28 board may take action 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
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
dismissing the accusation, information, or indictment. . . .

10. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for
self-use in humans or animals, and includes the following:

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

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

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

7 11. Section 4059 of the Code states, in pertinent part, that a person may not furnish any
8 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any
10 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,
11 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

12 REGULATORY PROVISIONS

13 12. California Code of Regulations, title 16, section 1769, states:

14 (b) When considering the suspension or revocation of a facility or a personal
15 license on the ground that the licensee or the registrant has been convicted of a crime,
16 the board, in evaluating the rehabilitation of such person and his present eligibility for
17 a license will consider the following criteria:

18 (1) Nature and severity of the act(s) or offense(s).

19 (2) Total criminal record.

20 (3) The time that has elapsed since commission of the act(s) or offense(s).

21 (4) Whether the licensee has complied with all terms of parole, probation,
22 restitution or any other sanctions lawfully imposed against the licensee.

23 (5) Evidence, if any, of rehabilitation submitted by the licensee.

24 13. California Code of Regulations, title 16, section 1770, states:

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

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1 COSTS

2 14. Section 125.3 of the Code states, 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 (February 22, 2011 Criminal Conviction for Reckless Driving on October 10, 2010)

8 15. Respondent has subjected his registration to discipline under sections 490 and 4301,
9 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
10 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

11 a. On or about February 22, 2011, in a criminal proceeding entitled *People of the*
12 *State of California v. Raymond John Villagomez*, in Riverside County Superior Court, case
13 number INM1100413, Respondent was convicted on his plea of guilty to violating Vehicle Code
14 section 23103, subdivision (a), reckless driving, as a result of a plea agreement whereby a third
15 count was added to the complaint. Respondent was originally charged with violating Vehicle
16 Code section 23152, subdivision (a), driving under the influence; and Vehicle Code section
17 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or higher,
18 misdemeanors, which were dismissed as part of the plea agreement.

19 b. As a result of the conviction, on or about February 22, 2011, Respondent was
20 sentenced to serve two days in jail, with credit for two days, and ordered to serve 24 months
21 summary probation. Respondent was further ordered to pay fines, fees, and restitution in the
22 amount of \$1,164, and comply with the standard terms of probation.

23 c. The facts that led to the conviction were that on or in the early morning hours
24 of October 10, 2010, a California Highway Patrol (CHP) officer made a traffic stop on
25 Respondent for violations of the Vehicle Code. As the officer was speaking to Respondent at the
26 driver's side window, he noted an odor of an alcohol beverage emitting from inside the vehicle.
27 Respondent was directed to exit his vehicle and was asked a series of pre-field sobriety test
28 questions. Respondent admitted drinking beer earlier in the evening. Respondent exhibited

1 nystagmus and eyelid tremors, and swayed when standing still. No other tests could be
2 performed due to Respondent's claim that his pre-existing physical limitations prevented testing.
3 Respondent provided two breath samples in the preliminary alcohol screening test which were
4 analyzed with a BAC of .087 and .099.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)**

7 16. Respondent has subjected his registration to disciplinary action under section 4301,
8 subdivision (h) of the Code for unprofessional conduct in that on or about October 10, 2010, as
9 detailed in paragraph 16, above, Respondent used alcohol and was impaired by alcohol to an
10 extent that was potentially dangerous or injurious to himself, and to the public.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Violation of State & Federal Laws
13 Regulating Controlled Substances)**

14 17. Respondent has subjected his registration to disciplinary action under section 4301,
15 subdivision (j) of the Code in that on or about March 1, 2010, Respondent possessed controlled
16 substances illegally. The circumstances are as follows:

17 a. On the morning of March 1, 2010, members of the Riverside County Sheriff
18 Department's Special Investigations Bureau-Narcotics, Immigration and Customs Enforcement
19 (ICE), and the California Highway Patrol (CHP), executed a search warrant at Respondent's
20 residence that he shared with his wife, two children, and a half-brother.

21 b. As law enforcement approached the residence, they observed Respondent and
22 another male sitting in the front seat of a truck parked in the driveway. Both were ordered out of
23 the vehicle at gunpoint. Three suspects, including Respondent, were handcuffed and detained in
24 the backyard of Respondent's residence.

25 c. Officers searched Respondent's bedroom and located a Glock 26 9mm
26 handgun, loaded with nine live rounds in the clip, 28.5 grams of methamphetamine, a digital
27 scale, and \$1,350 in various bills of U.S. currency. Two baggies containing 1.5 grams each of
28 methamphetamine were found on the patio where Respondent and two others had been detained.

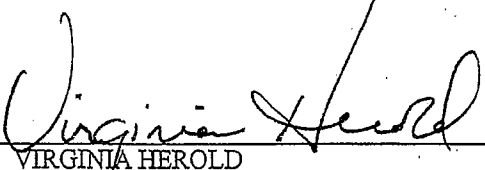
1 Respondent told the officers the methamphetamine had fallen out of his pocket. The search also
2 revealed that Respondent's vehicle had been towed the night before (February 28, 2010), when he
3 was cited by the CHP for driving without a license. The vehicle was searched at the impound lot
4 and an additional four-gram bindle of methamphetamine was located by officers. Respondent
5 was read his *Miranda* rights; Respondent stated "I got nothing to say. I'm busted." The evidence
6 was released to federal law enforcement officers in order to further a joint narcotics smuggling
7 investigation.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 85162,
12 issued to Raymond John Villagomez;
- 13 2. Ordering Raymond John Villagomez to pay the Board of Pharmacy the reasonable
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions
15 Code section 125.3;
- 16 3. Taking such other and further action as deemed necessary and proper.

17
18 DATED: 4/27/11


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

23 SD2011700189
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