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8	BEFOR	
9	BOARD OF D DEPARTMENT OF C	
10	STATE OF C	ALIFORNIA
11	In the Matter of the Accusation Against:	Case No. 4241
12	EDUARDO GONZALEZ	DEFAULT DECISION AND ORDER
13	15279 Orchid Street	•
. 14	Fontana, CA 92335	[Gov. Code, §11520]
15	Pharmacy Technician Registration No. TCH 96364	
16	Respondent.	
17	·`	
18	FINDINGS	<u>OF FACT</u>
Í		ainant Virginia K. Herold, in her official
19	capacity as the Executive Officer of the Board of	Pharmacy, Department of Consumer Affairs,
20	filed Accusation No. 4241 against Eduardo Gonzalez (Respondent) before the Board of	
21	Pharmacy. (Accusation attached as Exhibit A.)	
22	2. On or about February 1, 2011, the Bo	ard of Pharmacy (Board) issued Pharmacy
23	Technician Registration No. TCH 96364 to Resp	ondent. The Pharmacy Technician Registration
24	was in full force and effect at all times relevant to	the charges brought in Accusation No. 4241
25	and will expire on February 28, 2013, unless rene	ewed.
26	3. On or about August 24, 2012, Respon	ndent was served by Certified and First Class
27	Mail copies of the Accusation No. 4241, Stateme	nt to Respondent, Notice of Defense, Request
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DEFAULT DECISION AND ORDER

1	for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and	
2	11507.7) at Respondent's address of record which, pursuant to Business and Professions Code	
3.	section 4100, is required to be reported and maintained with the Board. Respondent's address of	
4	record was and is 15279 Orchid Street, Fontana, CA 92335.	
5	4. Service of the Accusation was effective as a matter of law under the provisions of	
6	Government Code section 11505, subdivision (c) and/or Business & Professions Code section	
7	124.	
8	5. The aforementioned documents have not been returned by the U.S. Postal Service,	
9	and a mail receipt for the certified mailed copy of the Accusation was received in this Office on	
10	August 29, 2012.	
11	6. Government Code section 11506 states, in pertinent part:	
12	(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts	
13	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	
14	may nevertheless grant a hearing.	
15	7. Respondent failed to file a Notice of Defense within 15 days after service upon him	
16	of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.	
17	4241.	
18	8. California Government Code section 11520 states, in pertinent part:	
19	(a) If the respondent either fails to file a notice of defense or to appear at the 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 respondent.	
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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's offices regarding the allegations contained in Accusation No. 4241, finds that	
27	the charges and allegations in Accusation No. 4241, are separately and severally, found to be true	
28	and correct by clear and convincing evidence.	
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DEFAULT DECISION AND ORDER

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1	10. Taking official notice of its own internal records, pursuant to Business and	
2	Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation	
3	and Enforcement is \$2,125.00 as of October 9, 2012.	
4	DETERMINATION OF ISSUES	
5	1. Based on the foregoing findings of fact, Respondent Eduardo Gonzalez has subjected	L
6	his Pharmacy Technician Registration No. TCH 96364 to discipline.	
7	2. The agency has jurisdiction to adjudicate this case by default.	
8	3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician	
9	Registration based upon the following violations alleged in the Accusation which are supported	
10	by the evidence contained in the Default Decision Evidence Packet in this case.	
11	a. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section	
12	4301, subdivisions (f) and (l), as well as 490 and 493 for unprofessional conduct and for five	
13	criminal convictions between 2009 and 2012 that are substantially related to the qualifications,	
14	functions, and duties of a Pharmacy Technician.	
15	b. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and	
16	4301, subdivisions (f) and (g), for the commission of an act of dishonesty and knowingly making	
17	or signing a document falsely representing a fact when he failed to disclose his January 6, 2009	
18	criminal conviction for a violation of Penal Code section 647(f) (disorderly conduct: public	
19	intoxication) in his application.	
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1	<u>ORDER</u>	
2	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 96364, heretofore	
3	issued to Respondent Eduardo Gonzalez, 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 December 7, 2012.	
9	It is so ORDERED ON November 7, 2012	
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
11	STATE OF CALIFORNIA	
12		
13	& C. Wussi	
14	By	
15	Board President	
16	· · · ·	
17	70630235.DOC DOJ Matter ID:SD2012702950	
18	Attachment:	
19	Exhibit A: Accusation	
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	DEFAULT DECISION AND ORDER	

# Exhibit A

Accusation

	1 2 3 4 5 6 7 8 9 :	KAMALA D. HARRIS Attorney General of California JAMES M. LEDAKIS Supervising Deputy Attorney General DIANE DE KERVOR Deputy Attorney General State Bar No. 174721 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2611 Facsimile: (619) 645-2061 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
	1	STATE OF CALIFORNIA
	2	In the Matter of the Accusation Against: Case No. 4241
	3	EDUARDO HUVENTINO GONZALEZ A C C U S A T I O N
	- ·    4	15279 Orchid Street Fontana, CA 92335
	5	Pharmacy Technician Registration No. TCH 96364
1	6	Respondent.
1	7	
• 1	8	Complainant alleges:
1	9	PARTIES
2	0	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
2	1	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
2	2	2. On or about February 1, 2011, the Board of Pharmacy issued Pharmacy Technician
2	.3	Registration Number TCH 96364 to Eduardo Gonzalez (Respondent). The Pharmacy Technician
2	24	Registration was in full force and effect at all times relevant to the charges brought herein and
2	25	will expire on February 28, 2013, unless renewed.
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		Accusation

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. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a	
6	license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the	
7	period within which the license may be renewed, restored, reissued or reinstated.	
8	5. Section 482 of the Code states:	
9	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:	
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11	(b) Considering suspension or revocation of a license under Section 490.	
12	Each board shall take into account all competent evidence of	
13	rehabilitation furnished by the applicant or licensee.	
14	6. Section 490 of the Code provides, in pertinent part, that a board may suspend or	
15	revoke a license on the ground that the licensee has been convicted of a crime substantially	
16	related to the qualifications, functions, or duties of the business or profession for which the	
17	license was issued.	
18	7. Section 493 of the Code states:	
19	Notwithstanding any other provision of law, in a proceeding conducted	
20	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, when the ground that the applicant or the licenses has	
21	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 during of the ligensee in quatien, the record of conviction of the grime shall be	
22	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	
23	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	
24	substantially related to the qualifications, functions, and duties of the licensee in question.	
25	As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'	
26	<ul> <li>and 'registration.'</li> <li>8. Section 4300 of the Code provides, in pertinent part, that every license issued may be</li> </ul>	
27	suspended or revoked.	
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### STATUTORY PROVISIONS

9. Section 4301 of the Code states:

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:

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(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.

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contenderc is deemed to be a conviction within the meaning of this provision. The 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.

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	REGULATORY PROVISIONS
2	10. California Code of Regulations, title 16, section 1769 states, in
3	pertinent part:
4	(b) When considering the suspension or revocation of a facility or a personal license
5	on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
6	(1) Nature and severity of the act(s) or offense(s).
7	(2) Total criminal record.
8	(3) The time that has elapsed since commission of the act(s) or offense(s).
9	(4) Whether the licensee has complied with all terms of parole, probation,
10 11	restitution or any other sanctions lawfully imposed against the licensee.(5) Evidence, if any, of rehabilitation submitted by the licensee.
12	11. California Code of Regulations, title 16, section 1770, states:
13	For the purpose of denial, suspension, or revocation of a personal or
]4	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
15.	related to the 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
16.	to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."
17	<u>COST RECOVERY</u>
18	12. Section 125.3 of the Code states, in pertinent part, that the Board
19	may request the administrative law judge to direct a licentiate found to have committed
20	a violation or violations of the licensing act to pay a sum not to exceed the reasonable cost
21	of the investigation and enforcement of the case.
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1	FIRST CAUSE FOR DISCIPLINE	
2	(March 7, 2012 Criminal Conviction for Driving on a Suspended License from a DUI	
3	on January 25, 2012)	
4	13. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section	
.5	4301, subdivisions (f) and (l), as well as 490 and 493 for unprofessional conduct and for a	
6	criminal conviction that is substantially related to the qualifications, functions, and duties of a	
7	Pharmacy Technician.	
8	a. On or about March 21, 2012, in a case entitled People vs. Gonzales (Tulare	
9	County Superior Court Case No. 12001645), Respondent pled guilty to a violation of Vehicle	
10	Code section 14601.2(a), driving on a suspended license from DUI, a misdemeanor.	
11	b. The facts and circumstances surrounding this cause for discipline are as	
12	follows: On January 25, 2012. Respondent drove his vehicle when his license was suspended	
13	form a previous conviction from driving under the influence of alcohol.	
14	c. On March 21, 2012, Respondent was sentenced to three years probation, 10	
15	days in jail, and ordered to pay \$2,291 in fines and fees.	
16	SECOND CAUSE FOR DISCIPLINE	
17	(July 21, 2011 Criminal Conviction for Public Intoxication on May 2, 2011)	
18	14. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and	
19	4301, subdivisions (f), (h), (k), and (l) as well as 490 and 493 for unprofessional conduct, using	
20	alcoholic beverages to an extent or in a manner as to be dangerous to himself or others, and for	
21	multiple criminal convictions involving the use of alcoholic beverages, and for a criminal	
22	conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy	
23	Technician.	
24	a. On or about July 21, 2011, in a case entitled People vs. Gonzales (San	
25	Bernardino Superior Court Case No. MWV1102211), Respondent pled nolo contendere to a	
26	violation of Penal Code section 415(3). disorderly conduct: public intoxication, a misdemeanor.	
27	b. The facts and circumstances surrounding this cause for discipline are as	
28	follows: On May 2, 2011, Respondent and a friend left a restaurant/bar very intoxicated. They	
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were asked to leave the area by the mall security. Respondent and his friend verbally and physically harassed the two security guards at a mall. Respondent yelled obscenities, touched his own genitals, and lunging at one of the guards with a fist. Respondent and his friend then fled the scene. Respondent was apprehended and arrested for assault, public intoxication, and disturbing the peace.

c. On July 21, 2011, Respondent was sentenced to three years probation, 52 days in jail, weekend commitment, and ordered to pay a \$692 fine.

## THIRD CAUSE FOR DISCIPLINE

(April 20, 2010 Criminal Conviction for Driving Under the Influence on January 16, 2010)
15. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
4301. subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an
extent or in a manner as to be dangerous to himself or others and for multiple criminal
convictions involving the use of alcoholic beverages and that are substantially related to the
qualifications, functions, and duties of a Pharmacy Technician.

a. On or about April 20, 2010, in a case entitled People vs. Gonzales (San
Bernardino Superior Court Case No. TVA1000174), Respondent pled nolo contedere to a
violation of Vehicle Code section 23152(b), driving under the influence of alcohol with a BAC
greater than .08, a misdemeanor.

b. The facts and circumstances surrounding this cause for discipline are as follows: On January 16, 2010, Respondent swerved into another car causing an accident. When police arrived, Respondent admitted that he had had one alcoholic drink and he was given a field sobriety test, which he failed. He was transported to the Police Department where he took a breathalyzer test with a result of .08% BAC.

c. On April 20, 2010, Respondent was sentenced to two days in jail, three
years summary probation. to pay \$1,838.00 in fines and fees, and to attend a three month First
Offender Program.

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d. On November 28, 2011, Respondent admitted violating the terms of his

probation and his probation was extended to expire on November 28, 2012 with certain modifications.

## FOURTH CAUSE FOR DISCIPLINE

# (April 8, 2010 Criminal Conviction for Petty Theft on February 5, 2010)

16. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section 4301. subdivisions (f) and (l), as well as 490 and 493 for commission of an act involving moral turpitude and dishonesty leading to a criminal conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy Technician.

a. On or about April 8, 2010, in a case entitled People vs. Gonzales (San
Bernardino Superior Court Case No. MWV1001084), Respondent pled guilty to a violation of
Penal Code section 484(a)/490.5(a), petty theft: retail merchandise, a misdemeanor.

b. The facts and circumstances surrounding this cause for discipline are as follows: on or about February 5, 2010, Respondent was observed taking the price tag off of a pair of sunglasses valued at \$26.10, putting the sunglasses in his pocket, and walking out of a Sears Grand store by a security guard watching security cameras. When confronted, the security guard located the glasses in Respondent's pocket. Respondent admitted to the police that he took the glasses without paying for them.

c. On April 8, 2010, Respondent was sentenced to 2 years probation, to pay a \$491 fine and restitution, and to 1 day in jail. On July 21, 2011, Respondent violated the terms of his probation. his probation was ordered terminated, and in lieu of the balance of his unpaid fine he was sentenced to serve four days in jail on a work release/weekender program.

d. On August 8, 2011, the guilty plea was set aside and vacated, a plea of not
guilty was entered, and the complaint dismissed pursuant to Penal Code 1203.4.

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### FIFTH CAUSE FOR DISCIPLINE

(January 6, 2009 Criminal Conviction for Drunk in Public on November 16, 2008)

26 17. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and
27 4301. subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an
28 extent or in a manner as to be dangerous to himself or others and for multiple criminal

convictions involving the use of alcoholic beverages and that are substantially related to the qualifications, functions, and duties of a Pharmacy Technician. 2

On or about January 6, 2009, in a case entitled People vs. Gonzales (San a. Bernardino Superior Court Case No. MVA803725), Respondent pled guilty to a violation of Penal Code section 647(f), disorderly conduct: public intoxication, a misdemeanor. 5

b. The facts and circumstances surrounding this cause for discipline are as 6 follows: On November 16, 2008, a Fontana Police Department Officer was dispatched to a 7 8 location where individuals were engaged in an altercation. He observed several subjects arguing on the street and sidewalk. Respondent and his brother appeared to be very intoxicated and would C) not comply with the Officer's orders to sit down and stop arguing. Respondent called the Officer 10 an expletive "pig." After sitting down on the curb, Respondent stood up again and faced an 11 officer. Because he was stumbling, could not care for himself, and appeared very intoxicated, he 12 was arrested. 13

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On May 1, 2008, Respondent was sentenced to pay a \$150.00 fine. ¢. '

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## SIXTH CAUSE FOR DISCIPLINE

## (Failure to Disclose January 6, 2009 Criminal Conviction on Application)

18. Grounds exist to revoke Respondent's license pursuant to Code sections 4300, and 17 .4301, subdivisions (f) and (g), for the commission of an act of dishonesty and knowingly making 18 19 or signing a document falsely representing a fact when he failed to disclose his January 6, 2009 criminal conviction for a violation of Penal Code section 647(f) (disorderly conduct: public 20 intoxication) in his application. 21

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19. The facts supporting this cause for discipline are as follows. On or about September 15, 2009, Respondent filed an application with the Pharmacy Board to be a Pharmacy Technician.

Question 6 on the application asks: 24

> Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of \$500 or less need not be reported. If "yes," attach an explanation including the type of violation, the date, circumstances, location and complete penalty received. In addition to this written explanation, please provide the Board of

1	Pharmacy with certified copies of all pertinent court documents or arrest reports related to this conviction. (Emphasis in original.)
2	20. Respondent checked "no" to that question. He signed the application, under penalty
3	of perjury, on September 12, 2009. Accordingly, Respondent did not disclose his January 6,
4	2009, conviction on his application to the Pharmacy Board, as described in paragraph 16 above,
5	which is herein incorporated by reference.
6	PRAYER
7	WHEREFORE. Complainant requests that a hearing be held on the matters herein alleged,
8	and that following the hearing, the Board of Pharmacy issue a decision:
9	1. Revoking or suspending Pharmacy Technician Registration Number TCH 96364,
10	issued to Eduardo Gonzalez
11	2. Ordering Eduardo Gonzalez to pay the Board of Pharmacy the reasonable costs of the
12	investigation and enforcement of this case, pursuant to Business and Professions Code section
13	125.3;
14	3. Taking such other and further action as deemed necessary and proper.
15	DATED: 82012 (Jugine Herde
16	VIRGINIA HEROLD Executive Officer
17	Board of Pharmacy Department of Consumer Affairs
18	State of California Complainant
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