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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. 4337

13
14 **JESSER HERNANDEZ DELACRUZ**

DEFAULT DECISION AND ORDER

15 **9168 Quail Cove Drive**
16 **Elk Grove, CA 95624**
17 **Pharmacy Technician License No. TCH**
18 **84851**

[Gov. Code, §11520]

19 Respondent.

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21 **FINDINGS OF FACT**

22 1. On or about June 27, 2013, Complainant Virginia K. Herold, in her official capacity
23 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
24 Accusation No. 4337 against Jesser Hernandez Delacruz (Respondent) before the Board of
25 Pharmacy. (Accusation attached as Exhibit A.)

26 2. On or about January 28, 2009, the Board of Pharmacy (Board) issued Pharmacy
27 Technician License No. TCH 84851 to Respondent. The Pharmacy Technician License was in
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1 full force and effect at all times relevant to the charges brought in Accusation No. 4337 and will
2 expire on July 31, 2014, unless renewed

3 3. On or about July 8, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 4337, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is:

9 9168 Quail Cove Drive
10 Elk Grove, CA 95624.

11 4. Service of the Accusation was effective as a matter of law under the provisions of
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
13 124.

14 5. On or about July 29, 2013, the aforementioned documents were returned by the U.S.
15 Postal Service marked "signed "Peter R. Dej." The address on the documents was the same as the
16 address on file with the Board. Respondent failed to maintain an updated address with the Board
17 and the Board has made attempts to serve the Respondent at the address on file. Respondent has
18 not made himself available for service and therefore, has not availed himself of his right to file a
19 notice of defense and appear at hearing.

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

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

26 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
27 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
28 4337.

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

(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

1 or upon other evidence and affidavits may be used as evidence without any notice to
2 respondent.

3 9. Pursuant to its authority under Government Code section 11520, the Board finds
4 Respondent is in default. The Board will take action without further hearing and, based on the
5 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
6 taking official notice of all the investigatory reports, exhibits and statements contained therein on
7 file at the Board's offices regarding the allegations contained in Accusation No. 4337, finds that
8 the charges and allegations in Accusation No. 4337, are separately and severally, found to be true
9 and correct by clear and convincing evidence.

10 10. Taking official notice of its own internal records, pursuant to Business and
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
12 and Enforcement is \$935.00 as of September 16, 2013.

13 DETERMINATION OF ISSUES

14 1. Based on the foregoing findings of fact, Respondent Jesser Hernandez Delacruz has
15 subjected his Pharmacy Technician License No. TCH 84851 to discipline.

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

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

20 a. Respondent is subject to disciplinary action under section 490 and 4301, subdivisions
21 (k) and (l) in that he was convicted of a crimes substantially related to the practice of a pharmacy
22 technician. The circumstances are as follows:

23 1. On or about December 9, 2011, in *People v. Jesser Hernandez Delacruz*, Superior
24 Court of California, County of Sacramento; Case No. 11T04552, Respondent was convicted on
25 his plea of guilty to a violation of Vehicle Code section 23152(b) (driving while under the
26 influence of alcohol with a BAC of .18) and Vehicle Code section 20002 (a) (failure to stop at the
27 scene of an accident). The circumstances were that on or about July 14, 2011, as a result of an
28

1 investigation by the California Highway Patrol, it was determined that respondent was in a
2 collision. California Highway Patrol found respondent at home under the influence of alcohol.

3 2. On or about October 7, 2009, in *People v. Jesser Hernandez Delacruz*, Superior
4 Court of California, County of Sacramento; Case No. 09T04292, Respondent was convicted on
5 his plea of no contest to a violation of Vehicle Code section 23152(b) (driving while under the
6 influence of alcohol).

7 b. Respondent has subjected his license to discipline pursuant to Code section
8 4301 (h) in that Respondent used alcohol to an extent or in a manner dangerous or injurious to
9 himself or others, as more particularly set forth in paragraphs (a) (1) and (a) (2), above.

10 ORDER

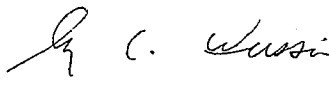
11 IT IS SO ORDERED that Pharmacy Technician License No. TCH 84851, heretofore issued
12 to Respondent Jesser Hernandez Delacruz, is revoked.

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 November 22, 2013.

18 It is so ORDERED ON October 23, 2013.

19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 
23 By _____
24 STAN C. WEISSER
25 Board President

26 11173194.DOC
27 DOJ Matter ID:SA2012106601

28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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. 4337

13 **JESSER HERNANDEZ DELACRUZ**
14 **9168 Quail Cove Drive**
Elk Grove, CA 95624

ACCUSATION

15 **Pharmacy Technician License No. TCH**
16 **84851**

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 January 28, 2009, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 84851 to Jesser Hernandez Delacruz (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and expired on July 31, 2014.

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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. Section 4300 of the Code states:

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

5. 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:

"(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.

"(l) 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

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

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

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

16 **FIRST CAUSE FOR DISCIPLINE**
(Convictions)

17 8. Respondent is subject to disciplinary action under section 490 and 4301,
18 subdivisions (k) and (l) in that he was convicted of a crime substantially related to the practice of
19 a pharmacy technician. The circumstances are as follows:

20 9. On or about December 9, 2011, in *People v. Jessor Hernandez Delacruz*, Superior
21 Court of California, County of Sacramento; Case No. 11T04552, Respondent was convicted on
22 his plea of guilty to a violation of Vehicle Code section 23152(b) (driving while under the
23 influence of alcohol with a BAC of .18) and Vehicle Code section 20002 (a) (failure to stop at the
24 scene of an accident).

25 10. The circumstances were that on or about July 14, 2011, as a result of an
26 investigation by the California Highway Patrol, it was determined that respondent was in a
27 collision. California Highway Patrol found respondent at home under the influence of alcohol.
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11. On or about October 7, 2009, in *People v. Jesser Hernandez Delacruz*, Superior Court of California, County of Sacramento; Case No. 09T04292, Respondent was convicted on his plea of no contest to a violation of Vehicle Code section 23152(b) (driving while under the influence of alcohol). The circumstances were that Respondent was in a traffic collision. Respondent had a BAC of .269% and reported that he had consumed 9 drinks.

SECOND CAUSE FOR DISCIPLINE
(Use in a Manner Dangerous to self or Others)

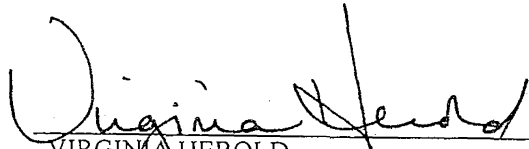
12. Respondent has subjected his license to discipline pursuant to Code section 4301 (h) in that Respondent used alcohol to an extent or in a manner dangerous or injurious to himself or others, as more particularly set forth in paragraphs 8, 9, and 10, above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 84851, issued to Jesser Hernandez Delacruz.;
2. Ordering Jesser Hernandez Delacruz 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: 6/27/13


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

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