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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. 4339

13
14 **TRISTAN JUSTIN NAVARRO**
15 **RODRIGUEZ**
16 **612 W. 214th Street**
Carson, CA 90745

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17 **Pharmacy Technician Registration No. TCH**
18 **89059**

19
20 Respondent.

21
22 **FINDINGS OF FACT**

23 1. On or about January 18, 2013, Complainant Virginia K. Herold, in her official
24 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
25 filed Accusation No. 4339 against Tristan Justin Navarro Rodriguez (Respondent) before the
26 Board of Pharmacy. (Accusation attached as Exhibit A.)
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2. On or about February 9, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 89059 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4339 and will expire on April 30, 2014, unless renewed.

3. On or about January 28, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4339, 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, is required to be reported and maintained with the Board. Respondent's address of record was and is:

612 W. 214th Street
Carson, CA 90745.

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

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

(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 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.

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4339.

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the

of Pharmacy Board relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as, not
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 4339, finds that
4 the charges and allegations in Accusation No. 4339, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 9. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$2,062.00 as of June 4, 2013.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Tristan Justin Navarro Rodriguez
11 has subjected his Pharmacy Technician Registration No. TCH 89059 to discipline.

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

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

16 a. First Cause for Discipline - Convictions of Substantially Related Crimes. On or
17 about July 13, 2011, after pleading nolo contendere, Respondent was convicted of one
18 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
19 having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The*
20 *People of the State of California v. Tristan Justin Rodriguez* (Super. Ct. Los Angeles County,
21 2011, No. 1CP02022).

22 On or about August 6, 2009, after pleading nolo contendere, Respondent was convicted of
23 two misdemeanor counts, Count 2, violating Vehicle Code section 23152, subdivision (b)
24 [driving while having 0.08% or more, by weight, of alcohol in his blood] and interlineated Count
25 3, violating Vehicle Code section 23103 [reckless driving] in the criminal proceeding entitled *The*
26 *People of the State of California v. Tristan Justin Rodriguez* (Super. Ct. Los Angeles County,
27 2009, No. 9CP00580) with the finding that alcohol/drugs were involved in the incident as to
28 Count 3.

2 disciplinary action under section 4301, subdivision (h), in that Respondent used alcoholic
3 beverage to an extent or in a manner dangerous or injurious to himself, another person, or the
4 public, when he operated a vehicle while having 0.19% of alcohol in his blood.

5 c. Third Cause for Discipline – Convictions Involving the Consumption of Alcohol.
6 Respondent is subject to disciplinary action under section 4301, subdivision (k) in that
7 Respondent was convicted of more than one misdemeanor involving the consumption of an
8 alcoholic beverage.

9 **ORDER**

10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 89059, heretofore
11 issued to Respondent Tristan Justin Navarro Rodriguez, is revoked.

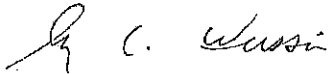
12 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
13 written motion requesting that the Decision be vacated and stating the grounds relied on within
14 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
15 vacate the Decision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

16 This Decision shall become effective on October 7, 2013.

17 It is so ORDERED ON September 6, 2013.

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

21
22 By


23 STANLEY C. WEISSER
24 Board President

25
26 51305529.DOC
27 DOJ Matter ID: LA2012507139

28 Attachment:
Exhibit A: Accusation

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7 *Attorneys for Complainant*

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. 4339

13 **TRISTAN JUSTIN NAVARRO**
14 **RODRIGUEZ**
15 **a.k.a., TRISTAN JUSTIN RODRIGUEZ**
612 W. 214th Street
16 Carson, CA 90745

ACCUSATION

17 Pharmacy Technician Registration
18 No. TCH 89059

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 February 9, 2009, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 89059 to Tristan Justin Navarro Rodriguez, also known as
25 Tristan Justin Rodriguez (Respondent). The Pharmacy Technician Registration was in full force
26 and effect at all times relevant to the charges brought herein and will expire on April 30, 2014,
27 unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b), provides in pertinent part, that the expiration of a license
6 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
12 or profession for which the license was issued.

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

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

23 6. Section 4300 provides in pertinent part, that every license issued by the Board is
24 subject to discipline, including suspension or revocation.

25 7. Section 4301 states, in pertinent part:

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

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

7
8 "(k) The conviction of more than one misdemeanor or any felony involving the use,
9 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
10 combination of those substances.

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

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1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 **COST RECOVERY**

10 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
11 law judge to direct a licensee found to have committed a violation or violations of the licensing
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of case.

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Convictions of Substantially Related Crimes)**

15 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
16 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
17 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
18 of a pharmacy technician, as follows:

19 a. On or about July 13, 2011, after pleading nolo contendere, Respondent was convicted
20 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
21 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding
22 entitled *The People of the State of California v. Tristan Justin Rodriguez* (Super. Ct. Los Angeles
23 County, 2011, No. 1CP02022). The Court sentenced Respondent to serve 30 days in Los Angeles
24 County Jail and placed Respondent on 48 months probation, with terms and conditions. The
25 circumstances surrounding the conviction are that on or about January 6, 2011, Respondent drove
26 a vehicle while having 0.08% or more, by weight of alcohol in his blood. Respondent collided
27 with a parked vehicle causing it to push forward into two vehicles parked in front of it, resulting
28 in damages. While speaking to Respondent, the California Highway Patrol Department Officer

1 smelled a strong odor of an alcoholic beverage emitting from his breath and person. He was
2 observed to have bloodshot, watery eyes and his speech was slurred. When asked what he had to
3 drink, Respondent stated "a small cup of Sapporo." During the booking procedure, Respondent
4 submitted to a blood test that resulted in a blood-alcohol content level of 0.19%.

5 b. On or about August 6, 2009, after pleading nolo contendere, Respondent was
6 convicted of two misdemeanor counts, Count 2, violating Vehicle Code section 23152,
7 subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] and
8 interlineated Count 3, violating Vehicle Code section 23103 [reckless driving] in the criminal
9 proceeding entitled *The People of the State of California v. Tristan Justin Rodriguez* (Super. Ct.
10 Los Angeles County, 2009, No. 9CP00580) with the finding that alcohol/drugs were involved in
11 the incident as to Count 3. On or about August 6, 2010, after Respondent completed a court
12 ordered 3-month Alcohol Program, the Court dismissed the Count 2 conviction and placed him on
13 12 months probation, with terms and conditions. The circumstances surrounding the conviction
14 occurred on or about November 30, 2008, and Respondent was arrested.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
18 that Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to
19 himself, another person, or the public, when he operated a vehicle while having 0.19% of alcohol
20 in his blood. Complainant refers to, and by this reference incorporates, the allegations set forth
21 above in paragraph 10, subparagraph (a), as though set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Convictions Involving the Consumption of Alcohol)**

24 12. Respondent is subject to disciplinary action under section 4301, subdivision (k) in
25 that Respondent was convicted of more than one misdemeanor involving the consumption of an
26 alcoholic beverage. Complainant refers to, and by this reference incorporates, the allegations set
27 forth above in paragraph 10, subparagraphs (a) and (b), inclusive, as though set forth fully.

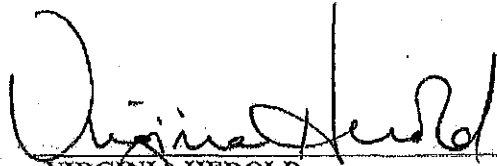
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 89059, issued to Respondent Tristan Justin Navarro Rodriguez;
2. Ordering Respondent Tristan Justin Navarro Rodriguez to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/18/13



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

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