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

In the Matter of the Accusation Against: **AARON MICHAEL IMPASTATO** 8429 Orchard Street Alta Loma, CA 91701 Pharmacy Technician License No. TCH 88443 Respondent.	Case No. 4442 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 18, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4442 against Aaron Michael Impastato (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about January 16, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 88443 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4442 expired on November 30, 2012, and has not been renewed. This lapse in licensure, however, pursuant to

Business and Professions Code section 118(b) does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about February 1, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4442, 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:

8429 Orchard Street
Alta Loma, CA 91701.

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. As of March 8, 2013, none of the documents referenced in paragraph 3 have been returned due to an outdated address of record.

6. 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.

7. 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. 4442.

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

9. 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

relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4442, finds that the charges and allegations in Accusation No. 4442, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $14,633.50[1] as of March 13, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Aaron Michael Impastato has subjected his Pharmacy Technician License No. TCH 88443 to discipline.

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

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

a. Respondent is subject to disciplinary action under section 490 and section 4301, subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in that on or about February 22, 2011, Respondent pled guilty to one felony count of violating Health and Safety Code section 11351 [possess/purchase for sale narcotic/controlled substance], a substantially related criminal conviction. The circumstances underlying the conviction are that on or about July 9, 2010, County of San Bernardino Sheriff's Department Officers served a search warrant on a residence in which Respondent resided and found 16 80mg pills of Oxycontin, a metal spoon with Heroin/Oxycontin residue, 18 cotton balls containing suspected Heroin, 3 hypodermic needles, a glass pipe containing suspected heroin residue and several other prescription pills in a bedroom identified as Respondent's. Officers also found a handwritten price list for Oxycontin, numerous prescription receipts for Oxycontin and various

[1] The cost of investigation is $13,056.00 and the cost of enforcement is $1,577.50.

prescription drugs. On or about July 20, 2010, Officers interviewed Respondent. The Respondent told officers that the drug paraphernalia found on the home belongs to him from when he used to inject Heroin. The Respondent also told officers that he has been selling Oxycontin for approximately two months. The Respondent stated that he sells both the Oxycontin prescribed to himself and the Oxycontin prescribed to his brother. He advised that he has been taking Oxycontin for the past year and is addicted to the drug. He normally consumes the drug orally but last injected himself 1 week prior. The criminal conviction and underlying conduct are described in more particularity in Accusation No. 4442, which is hereby incorporated by reference.

b. Respondent is subject to disciplinary action under section 4301 of the Code on the grounds of unprofessional conduct in that Respondent possessed drug paraphernalia, Heroin, sold Oxycontin and is addicted to Oxycontin. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

c. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated California statutes regulating controlled substances and dangerous drugs. Specifically, on or about February 22, 2011, Respondent pled guilty to one felony count of violating Health and Safety Code section 11351 [possess/purchase for sale narcotic/controlled substance]. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

d. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated California statutes regulating controlled substances and dangerous drugs. Specifically, Respondent possessed Oxycontin prescribed to his brother in violation of section 4060 of the Code. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

e. Respondent is subject to disciplinary action under section 4301, subdivision (h) in that Respondent administered to himself, Oxycontin and Heroin to an extent or in a manner as to be dangerous or injurious to himself, others or the public. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

f. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed acts involving dishonesty when he sold Oxycontin knowing it was illegal to do so. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

g. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code as defined in section 480, subdivision (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician. The conviction is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

h. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code as defined in section 480, subdivision (a)(2) of the Code in that Respondent committed an act involving dishonesty when he sold Oxycontin knowing it is illegal to do so. The conduct is described in more particularity in Accusation No. 4442, hereby incorporated by reference.

i. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that Respondent violated provisions of the Pharmacy Law. The violations are described in more particularity in Accusation No. 4442, hereby incorporated by reference.

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ORDER

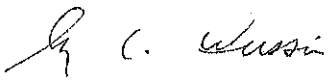
IT IS SO ORDERED that Pharmacy Technician License No. TCH 88443, heretofore issued to Respondent Aaron Michael Impastato, is revoked.

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

This Decision shall become effective on June 3, 2013.

It is so ORDERED ON May 3, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

51255199.DOC
DOJ Matter ID:LA2012507865

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

KAMALA D. HARRIS
Attorney General of California
GLORIA A. BARRIOS
Supervising Deputy Attorney General
KATHERINE MESSANA
Deputy Attorney General
State Bar No. 272953
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2554
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **AARON MICHAEL IMPASTATO** 8429 Orchard Street Alta Loma, CA 91701 Pharmacy Technician License No. TCH 88443 Respondent.	Case No. 4442 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about January 16, 2009, the Board of Pharmacy issued Pharmacy Technician License Number TCH 88443 to Aaron Michael Impastato ("Respondent"). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

JURISDICTION AND STATUTORY PROVISIONS

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 4300 of the Code provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

5. 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.

6. Section 4301 of the Code 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:
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> ...
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> (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.
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> ...
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> (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.
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> ...
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> (j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
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> ...
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> (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 a conviction following a plea of nolo contendere 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.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license."

7. Section 490 of the Code states, in pertinent part:

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

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

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

8. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

9. Section 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

10. 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.

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

REGULATORY PROVISION

11. California Code of Regulations, title 16, section 1770 provides:

"For the purpose of denial, suspension, or revocation of a personal or 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 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 to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare."

DRUG DEFINITIONS

12. Oxycontin [Oxycodone] is used for severe pain and is a dangerous drug pursuant to Business and Professions Code section 4022 and is a Schedule II Controlled Substance pursuant to Health and Safety Code section 11055(b)(1)(M).

13. Heroin is a dangerous drug pursuant to Business and Professions Code section 4022 and is a Schedule I Controlled Substance pursuant to Health and Safety Code section 11054(c)(11).

COST RECOVERY

14. Section 125.3 of the Code provides, 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 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

15. Respondent is subject to disciplinary action under section 490 and section 4301, subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section 1770 in that he was convicted of a substantially related crime, as follows:

16. On or about February 22, 2011, Respondent pled guilty to one felony count of violating Health and Safety Code section 11351 [possess/purchase for sale narcotic/controlled substance] in the criminal proceeding entitled *The People of the State of California v. Aaron Michael Impastato* (Super. Ct. of California, County of San Bernardino, 2010, Case No, FWV1002299). On or about April 5, 2011, the court sentenced Respondent to serve 180 days in a San Bernardino County Jail facility, register as a drug offender with the appropriate city or

county law enforcement agency pursuant to Health and Safety Code section 11590/11594 and placed Respondent on formal probation for a period of 36 months, with terms and conditions.

17. The circumstances underlying the conviction are that on or about July 9, 2010, County of San Bernardino Sheriff's Department Officers served a search warrant on a residence in which Respondent resided. On or about that day, Officers found 16 80mg pills of Oxycontin[1], a metal spoon with Heroin/Oxycontin residue, 18 cotton balls containing suspected Heroin, 3 hypodermic needles, a glass pipe containing suspected heroin residue and several other prescription pills in a bedroom identified as Respondent's. Officers also found a handwritten price list for Oxycontin, numerous prescription receipts for Oxycontin and various prescription drugs. On or about July 20, 2010, Officers interviewed Respondent. The Respondent told officers that the drug paraphernalia found on the home belongs to him from when he used to inject Heroin. The Respondent also told officers that he has been selling Oxycontin for approximately two months. The Respondent stated that he sells both the Oxycontin prescribed to himself and the Oxycontin prescribed to his brother. Advised that taking Oxycontin for the past year and is addicted to the drug. Normally consumes the drug orally but last injected himself 1 week prior.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

18. Respondent is subject to disciplinary action under section 4301 of the Code on the grounds of unprofessional conduct in that Respondent possessed drug paraphernalia, Heroin, sold Oxycontin and is addicted to Oxycontin. The conduct is described in more particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(Violation of Statutes Governing Controlled Substances/Dangerous Drugs)

19. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated California statutes regulating controlled substances and

[1] Found inside a prescription bottle issued to Respondent's brother which was filled on July 2, 2010, for a total quantity of 180 pills.

dangerous drugs. Specifically, on or about February 22, 2011, Respondent pled guilty to one felony count of violating Health and Safety Code section 11351 [possess/purchase for sale narcotic/controlled substance] in the criminal proceeding entitled *The People of the State of California v. Aaron Michael Impastato* (Super. Ct. of California, County of San Bernardino, 2010, Case No, FWV1002299). On or about April 5, 2011, the court sentenced Respondent to serve 180 days in a San Bernardino County Jail facility and placed Respondent on probation for a period of 36 months, with terms and conditions. The conviction is described in more particularity in paragraph 16 above, inclusive and hereby incorporated by reference.

20. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated California statutes regulating controlled substances and dangerous drugs. Specifically, Respondent possessed Oxycontin prescribed to his brother in violation of section 4060 of the Code. The possession is described in more particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

FOURTH CAUSE FOR DISCIPLINE

(Self-Administration Dangerous Drugs)

21. Respondent is subject to disciplinary action under section 4301, subdivision (h) in that Respondent administered to himself, Oxycontin and Heroin to an extent or in a manner as to be dangerous or injurious to himself, others or the public. The conduct is described in more particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

FIFTH CAUSE FOR DISCIPLINE

(Act Involving Dishonesty)

22. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that Respondent committed acts involving dishonesty when he sold Oxycontin knowing it was illegal to do so. The acts are described in more particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

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SIXTH CAUSE FOR DISCIPLINE

(Actions Warranting Denial of Licensure)

23. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code as defined in section 480, subdivision (a)(1) of the Code in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician. The conviction is described in more particularity in paragraph 16 above, inclusive and hereby incorporated by reference.

24. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code as defined in section 480, subdivision (a)(2) of the Code in that Respondent committed an act involving dishonesty when he sold Oxycontin knowing it is illegal to do so. The dishonest act is described in more particularity in paragraph 17 above, inclusive and hereby incorporated by reference.

SEVENTH CAUSE FOR DISCIPLINE

(Violate Provisions of the Licensing Chapter)

25. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code in that Respondent violated provisions of the Pharmacy Law. The violations are described in more particularity in paragraphs 15 through 24 above, inclusive and hereby incorporated by reference.

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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 of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 88443, issued to Aaron Michael Impastato;

2. Ordering Aaron Michael Impastato 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: 1/18/13

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

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