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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. 4506

13 **RODNEY GIN WILEY**  
14 **30556 Sleepy Hollow**  
15 **Shingletown, CA 96088-9432**

**DEFAULT DECISION AND ORDER**

16 **Pharmacy Technician Registration No. TCH**  
17 **7335**

[Gov. Code, §11520]

Respondent.

18  
19 **FINDINGS OF FACT**

20 1. On or about March 6, 2013, Complainant Virginia K. Herold, in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
22 Accusation No. 4506 against Rodney Gin Wiley (Respondent) before the Board of Pharmacy.  
23 (Accusation attached as Exhibit A.)

24 2. On or about May 17, 1993, the Board of Pharmacy (Board) issued Pharmacy  
25 Technician Registration No. TCH 7335 to Respondent. The Pharmacy Technician Registration  
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 4506  
27 and expired on February 28, 2013. This lapse in licensure, however, pursuant to Business and  
28

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

3 3. On or about March 22, 2013, Respondent was served by Certified and First Class  
4 Mail copies of the Accusation No. 4506, Statement to Respondent, Notice of Defense, Request  
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
8 record was and is: 30556 Sleepy Hollow, Shingletown, CA 96088-9432.

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

12 5. On or about April 10, 2013, the aforementioned documents were returned by the U.S.  
13 Postal Service marked "Not Deliverable As Addressed." The address on the documents was the  
14 same as the address on file with the Board. Respondent failed to maintain an updated address  
15 with the Board and the Board has made attempts to serve the Respondent at the address on file.  
16 Respondent has not made himself available for service and therefore, has not availed himself of  
17 his right to file a notice of defense and appear at hearing.

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

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

24 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
26 4506.

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

28 (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. 4506, finds that the charges and allegations in Accusation No. 4506, 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 \$807.50 as of June 25, 2013.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Rodney Gin Wiley has subjected his Pharmacy Technician Registration No. TCH 7335 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 Registration 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. Business and Professions Code section 4301, subdivision (l) – Criminal Conviction

b. Business and Professions Code section 4301, subdivision (k) – Conviction of More than One Alcohol Related Crimes

c. Business and Professions Code section 4301, subdivision (h) – Use of Alcohol in a Manner Dangerous or Injurious

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**ORDER**

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 7335, heretofore issued to Respondent Rodney Gin Wiley, 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 October 4, 2013.

It is so ORDERED ON September 4, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By   
STANLEY C. WEISSER  
Board President

default decision LIC.rtf  
DOJ Matter ID:SA2012109167

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KAREN R. DENVIR  
Deputy Attorney General  
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7 Attorneys for Complainant

8 BEFORE THE  
9 BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 4506

12 RODNEY GIN WILEY  
30556 Sleepy Hollow  
13 Shingletown, CA 96088-9432

ACCUSATION

14 Pharmacy Technician Registration No. TCH  
15 7335

16 Respondent.

17 Complainant alleges:

18 PARTIES

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

21 2. On or about May 17, 1993, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 7335 to Rodney Gin Wiley (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on February 28, 2013, unless renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.

1       4.     Section 4300 of the Code states, in pertinent part:

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

3       (b) The board shall discipline the holder of any license issued by the board, whose  
4       default has been entered or whose case has been heard by the board and found guilty,  
by any of the following methods:

5       (1) Suspending judgment.

6       (2) Placing him or her upon probation.

7       (3) Suspending his or her right to practice for a period not exceeding one year.

8       (4) Revoking his or her license.

9       (5) Taking any other action in relation to disciplining him or her as the board in its  
10      discretion may deem proper.

11      5.     Section 4301 of the Code states, in pertinent part:

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

15      ....

16      (h) The administering to oneself, of any controlled substance, or the use of any  
17      dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
18      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  
19      the person to conduct with safety to the public the practice authorized by the license.

20      ....

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

23      (l) The conviction of a crime substantially related to the qualifications, functions, and  
24      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  
25      regulating controlled substances or of a violation of the statutes of this state  
regulating controlled substances or dangerous drugs shall be conclusive evidence of  
26      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  
27      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  
28      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.

6. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

7. Section 118, subdivision (b), of the Code provides that the expiration 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.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Criminal Conviction)**

8. Respondent is subject to disciplinary action under section 4301, subdivision (l), in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. The circumstances are as follows:

9. On or about September 17, 2012, in the criminal proceeding entitled *People v. Rodney Gin Wiley* (Super. Ct. Shasta County, 2012, Case No. 12-05782), Respondent pled nolo contendere to a violation of Vehicle Code sections 23152(b) (driving while having a .08% or higher blood alcohol content), and Vehicle Code section 23154(a) (being on probation for a DUI and driving while having a .01% or higher blood alcohol content), both misdemeanors. In addition, Respondent admitted two prior DUI convictions within ten years of the commission of these crimes. The circumstances of the crime are that on or about July 13, 2012, California Highway Patrol Officer Cregger was dispatched to the scene of an injury traffic collision. Witnesses indicated that Vehicle 1 (V1) was waiting to make a left hand turn and Vehicle 2 (V2) was waiting behind V1. Respondent was seen passing V2 on the left and then hitting V1 as it began to make its turn. Officer Cregger contacted Respondent who was lying on a gurney in the back of an ambulance. Upon contacting Respondent, Officer Cregger detected the strong odor of



1 alcoholic beverage emitting from Respondent's breath and person. He also noticed that  
2 Respondent's eyes were red and watery, and his speech was slow, thick, and slurred. Respondent  
3 stated he was on his way home from the Shingletown Bar and that remembered striking another  
4 vehicle but could not remember how it happened. Respondent admitted to drinking three glasses  
5 of whiskey that evening and stated that he felt the effects of the alcohol. Respondent voluntarily  
6 submitted to a Preliminary Alcohol Screening which produced results of .218 % and .208 %  
7 blood alcohol content. At the time of the incident, Respondent was on probation for another DUI  
8 until June 8, 2013, with a condition that he not drive with any alcohol in his system.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Conviction of More than One Alcohol Related Crimes)**

11 10. Respondent is subject to disciplinary action under section 4301, subdivision (k), in  
12 that he has been convicted of more than one misdemeanor involving the use, consumption, or  
13 self-administration of any dangerous drug or alcoholic beverage, or any combination of those  
14 substances. The circumstances are as follows:

15 a. On or about May 23, 2006, Respondent was convicted of a misdemeanor violation of  
16 Vehicle Code section 23152(b) in Shasta County Superior Court Case No. 0605126.

17 b. On or about June 9, 2008, Respondent was convicted of a misdemeanor violation of  
18 Vehicle Code section 23152(b) in Shasta County Superior Court Case No. 0804387.

19 c. On or about September 17, 2012, Respondent was convicted of misdemeanor  
20 violations of Vehicle Code sections 23152(b) and 23154(a) in Shasta County Superior Court Case  
21 No. 12-05782.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Use of Alcohol in a Manner Dangerous or Injurious)**

24 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
25 that on or about July 13, 2012, Respondent used alcohol to an extent or in a manner dangerous or  
26 injurious to himself and the public, as set forth in paragraph 10, above.

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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 Registration Number TCH 7335, issued to Rodney Gin Wiley.;
2. Ordering Rodney Gin Wiley 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: 3/6/13



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

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