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

In the Matter of the Accusation Against:

**CHARMAINE GWENESHA AUSTIN AKA
CHARMAINE GWENESHA POWELL
3427 W. 59th Place
Los Angeles, CA 90043
Pharmacy Technician Registration No. TCH
27758**

Respondent.

Case No. 4604

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 3, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4604 against Charmaine Gwenesha Austin aka Charmaine Gwenesha Powell (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

1 2. On or about December 4, 1998, the Board of Pharmacy (Board) issued Pharmacy
2 Technician Registration No. TCH 27758 to Respondent. The Pharmacy Technician Registration
3 was in full force and effect at all times relevant to the charges brought in Accusation No. 4604
4 expired on July 31, 2014 and has not been renewed. This lapse in licensure, however, pursuant to
5 Business and Professions Code section 118(b) does not deprive the Board of its authority to
6 institute or continue this disciplinary proceeding.

7 3. On or about May 13, 2014, Respondent was served by Certified and First Class Mail
8 copies of the Accusation No. 4604, Statement to Respondent, Notice of Defense, Request for
9 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
10 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
11 is required to be reported and maintained with the Board. Respondent's address of record was
12 and is:

13 3427 W. 59th Place
14 Los Angeles, CA 90043.

15 4. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 5. On or about July 28, 2014, the aforementioned documents were returned by the U.S.
19 Postal Service marked "Unclaimed." The address on the documents was the same as the address
20 on file with the Board. Respondent failed to maintain an updated address with the Board and the
21 Board has made attempts to serve the Respondent at the address on file. Respondent has not
22 made herself available for service and therefore, has not availed herself of her right to file a notice
23 of defense and appear at hearing.

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

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

1 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
2 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4604.

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

4 (a) If the respondent either fails to file a notice of defense or to appear at the
5 hearing, the agency may take action based upon the respondent's express admissions
6 or upon other evidence and affidavits may be used as evidence without any notice to
7 respondent.

8 9. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on the
10 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
11 taking official notice of all the investigatory reports, exhibits and statements contained therein on
12 file at the Board's offices regarding the allegations contained in Accusation No. 4604, finds that
13 the charges and allegations in Accusation No. 4604, are separately and severally, found to be true
14 and correct by clear and convincing evidence.

15 10. Taking official notice of its own internal records, pursuant to Business and
16 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
17 and Enforcement is \$2,965.00 as of September 11, 2014.

18 **DETERMINATION OF ISSUES**

19 1. Based on the foregoing findings of fact, Respondent Charmaine Gwenesha Austin aka
20 Charmaine Gwenesha Powell has subjected her Pharmacy Technician Registration No. TCH
21 27758 to discipline.

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

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

26 a. Respondent violated Business and Professions Code sections 490, 4300 and
27 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770,
28 on the grounds of unprofessional conduct, in that Respondent was convicted of substantially
related crimes.

1 b. Respondent violated Business and Professions Code sections 4300 and 4301,
2 subdivision (g), on the grounds of unprofessional conduct, in that on or about October 23, 2009,
3 Respondent knowingly made a false document supporting a claim for payment under an insurance
4 policy.

5 c. Respondent violated Business and Professions Code sections 4300 and 4301,
6 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
7 involving moral turpitude, dishonest, fraud, deceit, or corruption.

8 **ORDER**

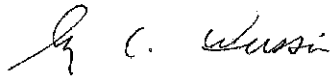
9 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 27758, heretofore
10 issued to Respondent Charmaine Gwenesha Austin aka Charmaine Gwenesha Powell, is revoked.

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

15 This Decision shall become effective on November 10, 2014.

16 It is so ORDERED October 10, 2014.

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

20 By 

21 STAN C. WEISSER
22 Board President

23 51595648.DOCDOJ Matter ID:LA2013509112

24 Attachment:
25 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 LESLIE A. WALDEN
Deputy Attorney General
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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. 4604

13 **CHARMAINE GWENESHA AUSTIN**
3427 W. 59th Place
Los Angeles, CA 90043

ACCUSATION

14 Pharmacy Technician Registration No. TCH 27758

15 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 (Board).

22 2. On or about December 4, 1998, the Board issued Pharmacy Technician Registration
23 No. TCH 27758 to Charmaine Gwenesha Austin (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on July 31, 2014, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 490 states, in pertinent part:

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

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

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

21 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
22 revoked."

23 7. Section 4301 states, in pertinent part:

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

27

28 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or

1 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
2 whether the act is a felony or misdemeanor or not.

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

5

6 "(l) The conviction of a crime substantially related to the qualifications, functions, and
7 duties of a licensee under this chapter. . . ."

8 **REGULATORY PROVISION**

9 8. California Code of Regulations, title 16, section 1770 states:

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

16 **COST RECOVERY**

17 9. Section 125.3 provides that the Board may request the administrative law judge to
18 direct a licentiate found to have committed a violation or violations of the licensing act to pay a
19 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

20 **FIRST CAUSE FOR DISCIPLINE**

21 **(Conviction of a Substantially Related Crime)**

22 10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,
23 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
24 grounds of unprofessional conduct, in that Respondent was convicted of substantially related
25 crimes, as follows:

26 a. On or about June 15, 2012, after pleading guilty, Respondent was convicted of one
27 interlineated felony count of violating Penal Code section 550(b)(1) [false insurance claim] in the
28 criminal proceeding entitled *The People of the State of California v. Charmaine Gwenesha Austin*

1 (Super. Ct. Orange County, 2011, No. 11CF1566). The Court sentenced Respondent to 120 days
2 jail, placed her on three (3) years probation, and ordered her to pay \$10,000.00 restitution to State
3 Farm Insurance Company.

4 b. The circumstances underlying the conviction are that on or about October 23, 2009,
5 admittedly, Respondent knowingly submitted to State Farm Insurance a false statement for
6 payment of a health care benefit under an insurance policy.

7 c. On or about October 6, 2004, Respondent was convicted of one misdemeanor count
8 of violating Vehicle Code section 12500(a) [drive without a license] in the criminal proceeding
9 entitled *The People of the State of California v. Charmaine Gwenesha Austin* (Super. Ct. Los
10 Angeles County, 2001, No. 1WL16701). The Court placed Respondent on 12 months probation.

11 d. The circumstances underlying the conviction occurred on or about November 1,
12 2011, where respondent was arrested for driving without a valid driver's license.

13 e. On or about October 11, 2001, after pleading nolo contendere, Respondent was
14 convicted of one misdemeanor count of violating Vehicle code section 23152(b) [drive with an
15 equal to or greater than 0.08% blood alcohol content (BAC)] in the criminal proceeding entitled
16 *The People of the State of California v. Charmaine Gwenesha Austin* (Super. Ct. Los Angeles
17 County, 2001, No. 11W02389). The Court placed Respondent on 36 months probation with
18 certain terms and conditions.

19 f. The circumstances underlying the conviction occurred on or about August 6, 2001,
20 where respondent was arrested for driving with a BAC of 0.08% or higher.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(False Documents)**

23 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
24 subdivision (g), on the grounds of unprofessional conduct, in that on or about October 23, 2009,
25 Respondent knowingly made a false document supporting a claim for payment under an insurance
26 policy. Complainant refers to and by this reference incorporates the allegations set forth above in
27 paragraph 10, subparagraphs a and b, inclusive, as though set forth fully.

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

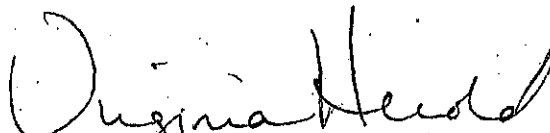
3 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
4 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
5 involving moral turpitude, dishonest, fraud, deceit, or corruption. Complainant refers to and by
6 this reference incorporates the allegations set forth above in paragraphs 10 and 11, inclusive, as
7 though set forth fully.

8 PRAYER

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

- 11 1. Revoking or suspending Pharmacy Technician Registration No. TCH 27758, issued
12 to Charmaine Gwenesha Austin;
- 13 2. Ordering Charmaine Gwenesha Austin to pay the Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to section 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16
17
18 DATED: 5/3/14



19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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