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

In the Matter of the Accusation Against:
YADIRA ISABEL DURAN
680 Evergreen Lane, #20
Port Hueneme, CA 93041
Pharmacy Technician Registration No. TCH
56087
Respondent.

Case No. 4733
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 15, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4733 against Yadira Isabel Duran (Respondent) before the Board of Pharmacy. A copy of the Accusation and Declaration of Service are attached as exhibit A, and is incorporated herein by reference.

2. On or about April 20, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 56087 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4733 and will expire on March 31, 2016, unless renewed.

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1 3. On or about April 16, 2014, Respondent was served by Certified Mail copies of the
2 Accusation No. 4733, Statement to Respondent, Notice of Defense, Request for Discovery, and
3 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
4 address of record which, pursuant to Business and Professions Code section 4100, is required to
5 be reported and maintained with the Board. Respondent's address of record was and is: 680
6 Evergreen Lane, #20, Port Hueneme, CA 93041.

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

10 5. On or about April 18, 2014, the aforementioned documents were received at the
11 address of record. A copy of the United States Postal Service's Track and Confirm No.
12 71969008911118127780 is attached as exhibit B, and is incorporated herein by reference.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
20 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4733.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 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. 4733, finds that

1 the charges and allegations in Accusation No. 4733, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement are \$3,916.50 as of April 17, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Yadira Isabel Duran has
8 subjected her Pharmacy Technician Registration No. TCH 56087 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
14 (l), of the Business and Professions Code, in conjunction with California Code of Regulation, title
15 16, section 1770, in that Respondent was convicted of a crime substantially related to the
16 qualifications, functions or duties of a licensed pharmacy technician.

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ORDER

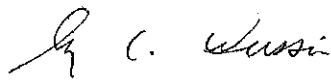
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 56087, heretofore issued to Respondent Yadira Isabel Duran, is revoked.

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 20, 2014.

It is so ORDERED September 18, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

DEFAULT DECISION AND ORDER.DOCX
DOJ Matter ID:LA2013509622

Attachment:
Exhibit A: Accusation
Exhibit B: A copy of United States Postal Service's Track and Confirm No.
71969008911118127780

Exhibit A

Accusation.

1 KAMALA D. HARRIS
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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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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. 4733

13 **YADIRA ISABEL DURAN**
680 Evergreen Lane, #20
Port Hueneme, CA 93041

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **56087**

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 April 20, 2004, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 56087 to Yadira Isabel Duran (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on March 31, 2014, 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 118, subdivision (b), of the Code provides that the
2 suspension/expiration/surrender/cancellation of a license shall not deprive the
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 490 of the Code states:

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

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

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

20 "(d) The Legislature hereby finds and declares that the application of this section has been
21 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
22 554, and that the holding in that case has placed a significant number of statutes and regulations
23 in question, resulting in potential harm to the consumers of California from licensees who have
24 been convicted of crimes. Therefore, the Legislature finds and declares that this section
25 establishes an independent basis for a board to impose discipline upon a licensee, and that the
26 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
27 to, but rather are declaratory of, existing law."

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1 6. Section 492 states:

2 "Notwithstanding any other provision of law, successful completion of any diversion
3 program under the Penal Code, or successful completion of an alcohol and drug problem
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
6 commencing with Section 500) of this code, or any initiative act referred to in that division, from
7 taking disciplinary action against a licensee or from denying a license for professional
8 misconduct; notwithstanding that evidence of that misconduct may be recorded in a record
9 pertaining to an arrest. This section shall not be construed to apply to any drug diversion program
10 operated by any agency established under Division 2 (commencing with Section 500) of this code,
11 or any initiative act referred to in that division."

12 7. Section 493 of the Code states:

13 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
14 the department pursuant to law to deny an application for a license or to suspend or revoke a
15 license or otherwise take disciplinary action against a person who holds a license, upon the
16 ground that the applicant or the licensee has been convicted of a crime substantially related to the
17 qualifications, functions, and duties of the licensee in question, the record of conviction of the
18 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
19 and the board may inquire into the circumstances surrounding the commission of the crime in
20 order to fix the degree of discipline or to determine if the conviction is substantially related to the
21 qualifications, functions, and duties of the licensee in question.

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

23 8. Section 4060 states, in pertinent part:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
27 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
28 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a

1 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
2 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
3 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
4 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
5 with the name and address of the supplier or producer. "

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

8 10. Section 4300.1 of the Code states:

9 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
10 operation of law or by order or decision of the board or a court of law, the placement of a license
11 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
12 of jurisdiction, to commence or proceed with any investigation of, or action or disciplinary
13 proceeding against, the licensee or to render a decision suspending or revoking the license."

14 11. Section 4301 of the Code states:

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

18 ...

19 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
20 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
21 whether the act is a felony or misdemeanor or not.

22 ...

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

28 ...

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
2 licensee or registrant to perform the functions authorized by his license or registration in a manner
3 consistent with the public health, safety, or welfare."

4 HEALTH AND SAFETY CODE SECTIONS

5 13. Health and Safety Code section 11170, states:

6 "No person shall prescribe, administer, or furnish a controlled substance for himself."

7 14. Health and Safety Code section 11550(a), states:

8 "No person shall use, or be under the influence of any controlled substance which is (1)
9 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
10 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
11 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
12 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
13 Schedule III, IV, or V, except when administered by or under the direction of a person licensed by
14 the state to dispense, prescribe, or administer controlled substances."

15 COST RECOVERY

16 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 CONTROLLED SUBSTANCE

21 a. Methamphetamine is a Schedule II controlled substance as designated by Health and
22 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
23 Business and Professions Code section 4022.

24 b. Marijuana (Cannabis) is a hallucinogenic Schedule I controlled substance as defined
25 in Health and Safety Code section 11054(d)(13) and a dangerous drug according to Business and
26 Professions Code section 4022.

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28 ///

1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

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

7 a. On or about September 27, 2011, after a plea of nolo contendere, Respondent was
8 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
9 [driving under the influence of alcohol/drugs] with special allegation of Vehicle Code section
10 23572, subdivision (a) [minor passenger in vehicle], and one misdemeanor count of violating
11 Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater
12 than or equal to .08%] with special allegation of Vehicle Code section 23572, subdivision (a)
13 [minor passenger in vehicle], in the criminal proceeding entitled *People of the State of California*
14 *v. Yadira Duran* (Super. Ct. Ventura County, 2010, No. 2010033054). Respondent was sentenced
15 to 6 days in jail, ordered to pay a fine and placed on formal probation for a period of 36 months
16 with terms and conditions.

17 b. The circumstances surrounding the conviction are that on or about September 3, 2010,
18 Oxnard Police Officer Currie was dispatched to an injury collision. Upon Officer Currie arrival to
19 the location, Officer Currie observed a white Toyota with damage on the driver's side and a gray
20 Nissan Altima with front-end damage to the driver's side. Officer Currie contacted Respondent
21 and her daughter was standing beside her. Officer Currie noticed that Respondent eyelids closed
22 slowly and her eyes were dilated, red, watery and droopy. Also, Officer Currie observed
23 Respondent was holding herself against the rear trunk of her vehicle as if she could not keep her
24 balance. Officer Currie conducted a seven-step drug abuse recognition evaluation and a series of
25 field sobriety tests on Respondent. Due to the results of Officer Currie's seven-step drug abuse
26 recognition evaluation and Respondent's performance on the field sobriety tests, Officer Currie
27 arrested Respondent for violation of Vehicle Code section 23152, subdivision (a) [driving under
28 the influence of alcohol/drugs] and Penal Code section 273a, subdivision (b) [child

1 endangerment]. Respondent was transported to the Ventura County Medical Center for medical
2 treatment and a voluntary blood test. Respondent's toxicology report tested positive for
3 methamphetamine and cannabinoids. Respondent admitted to Officer Currie that she smoked a
4 marijuana joint on the morning of her arrest.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Dangerous Use of Drug)**

7 17. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
8 Code in that she used dangerous drugs or alcoholic beverages to the extent or in a manner as to be
9 dangerous or injurious to herself or to the public. Complainant refers to, and by this reference
10 incorporates, the allegations set forth in paragraph 12, subparagraphs (a) and (b), as though set
11 forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unlawful Possession of a Controlled Substance)**

14 18. Respondent is subject to disciplinary action under section 4301, subdivision (f), (j)
15 and (o) of the Code for violating section 4060, on the grounds of unprofessional conduct, in that
16 Respondent was found to be in possession of a controlled substance. Complainant refers to, and
17 by this reference incorporates, the allegations set forth in paragraph 12, subparagraph (b), as
18 though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unlawful Self-Furnishing of Controlled Substances)**

21 19. Respondent is subject to disciplinary action under section 4301, subdivision (j) and
22 (o) of the Code for violating Health and Safety Code section 11170, on the grounds of
23 unprofessional conduct, in that Respondent prescribe, administer, or furnish a controlled
24 substance for herself. Complainant refers to, and by this reference incorporates, the allegations
25 set forth in paragraph 12, subparagraph (b), as though set forth fully

26 **PRAYER**

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

