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

In the Matter of the Accusation Against:

CARLOS SOLTERO
2716 1/2 Leafdale Ave.
El Monte, CA 91732
Pharmacy Technician Registration No. TCH
94675

Respondent.

Case No. 4768

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 21, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4768 against Carlos Soltero (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 6, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 94675 to Respondent. The Pharmacy Technician Registration expired on April 30, 2011, and has not been renewed.

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1 3. On or about November 22, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4768, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 2716 1/2 Leafdale Ave.
8 El Monte, CA 91732.

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. Government Code section 11506 states, in pertinent part:

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

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 4768.

21 7. 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 8. 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. 4768, finds that

1 the charges and allegations in Accusation No. 4768, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 9. 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 is \$1,610.00 as of January 7, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Carlos Soltero has subjected his
8 Pharmacy Technician Registration No. TCH 94675 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 Business and Professions Code
14 sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title
15 16, section 1770, for having sustained five convictions of crimes substantially related to the
16 qualifications, function, or duties of a pharmacy technician. Specifically, Respondent was
17 convicted of driving under the influence of alcohol and driving with a suspended license on
18 January 22, 2013, driving under the influence of alcohol and driving with a suspended license on
19 January 14, 2013, and driving with a suspended license on December 12, 2012.

20 b. Respondent is subject to disciplinary action under Business and Professions Code
21 sections 4300 and 4301, subdivision(k), for having been convicted of crimes involving alcohol.

22 c. Respondent is subject to disciplinary action under Business and Professions Code
23 sections 4300 and 4301, subdivision (h), for using alcohol to an extent dangerous or injurious to
24 himself or others.

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ORDER

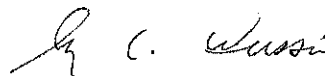
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 94675, heretofore issued to Respondent Carlos Soltero, is revoked.

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 March 6, 2014.

It is so ORDERED ON February 4, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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DOJ Matter ID: LA2013509995

Attachment:
Exhibit A: Accusation

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Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 M. TRAVIS PEERY
Deputy Attorney General
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300 So. Spring Street, Suite 1702
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Telephone: (213) 897-0962
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **CARLOS SOLTERO**
2716 1/2 Leafdale Ave.
13 El Monte, CA 91732
14 Pharmacy Technician Registration
No. TCH 94675
15 Respondent.

Case No. 4768
ACCUSATION

17
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.
22 2. On or about October 6, 2009, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 94675 to Carlos Soltero (Respondent). The Pharmacy
24 Technician Registration expired on April 30, 2011, and has not been renewed.

25 **JURISDICTION**

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

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1 STATUTORY PROVISIONS

2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states, in pertinent part:

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

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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"(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.

....

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

"(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."

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1 **REGULATORY PROVISIONS**

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

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 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
14 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
15 included in a stipulated settlement.

16 **FIRST CAUSE FOR DISCIPLINE**

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

18 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
19 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
20 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
21 of a pharmacy technician as follows:

22 a. On or about January 22, 2013, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
24 [driving while having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor
25 count of Vehicle Code section 14601.5, subdivision (a) [driving while driving privileges are
26 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
27 *Carlos Soltero* (Super. Ct. Los Angeles County, 2013, No. 2PS91740.) The Court sentenced
28

1 Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months probation
2 with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about March 19, 2012,
4 during an investigation of a vehicle hitting a traffic light pole and leaving the scene, Respondent
5 was contacted by an officer of the Monrovia Police Department. Respondent's vehicle was
6 parked with a flat tire and moderate collision damage to the hood and front passenger fender.
7 While speaking to Respondent, the officer could smell an odor of an alcoholic beverage on his
8 breath and person. Respondent admitted to colliding with the traffic light pole. He also admitted
9 to consuming two 32 ounce glasses of beer prior to driving. During the booking procedure,
10 Respondent submitted to a breath test that resulted in a breath-alcohol content level of 0.18% on
11 the first reading and 0.21% on the second.

12 c. On or about January 14, 2013, after pleading nolo contendere, Respondent was
13 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
14 [driving while having 0.08% or more, by weight, of alcohol in his blood] and one misdemeanor
15 count of Vehicle Code section 14601.1, subdivision (a) [driving while driver's license is
16 suspended or revoked] in the criminal proceeding entitled *The People of the State of California v.*
17 *Carlos Soltero* (Super. Ct. Los Angeles County, 2011, No. 2VY00285.) The Court sentenced
18 Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months probation
19 with terms and conditions.

20 d. The circumstances surrounding the conviction are that on or about June 11, 2011,
21 during a traffic stop by officers of the California Highway Patrol Department, Respondent was
22 contacted. While speaking to Respondent one of the officers detected an odor of an alcoholic
23 beverage emitting from the interior of the vehicle. The officer observed that Respondent had red,
24 watery eyes and his speech was slow and slurred. When questioned by the officer, Respondent
25 admitted to having consumed three beers. The officers then ran a license check which revealed
26 that Respondent's driver's license was suspended. During the booking procedure, Respondent
27 submitted to a breath test that resulted in a breath-alcohol content level of 0.23% on the first and
28 second readings.

1 e. On or about December 12, 2012, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a)
3 [driving while driver's license is suspended or revoked] in the criminal proceeding entitled *The*
4 *People of the State of California v. Carlos Soltero* (Super. Ct. Los Angeles County, 2012, No.
5 0JB06386.) The Court placed Respondent on 3 years probation with terms and conditions.

6 f. The circumstances surrounding the conviction are that on or about May 28, 2010,
7 Respondent drove a vehicle while his driving privileges were suspended or revoked.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Convictions Involving Alcohol)**

10 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
11 subdivision (k), on the grounds of unprofessional conduct, in that on or about June 14, 2013 and
12 January 22, 2013, Respondent was convicted of crimes involving the consumption of alcohol.
13 Complainant refers to and by this reference incorporates the allegations set forth above in
14 paragraph 10, subparagraphs (a) and (c), inclusive, as though set forth fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
18 subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol to an
19 extent or in a manner dangerous or injurious to herself or others when he operated a vehicle while
20 having 0.08% or more of alcohol in his blood. Complainant refers to and by this reference
21 incorporates the allegations set forth above in paragraphs 10, subparagraphs (b) and (d), inclusive,
22 as though set forth fully.

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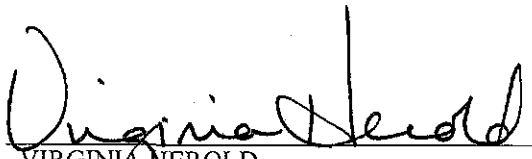
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PRAYER

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 94675, issued to Carlos Soltero;
2. Ordering Carlos Soltero 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: 10/21/13



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

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