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

In the Matter of the Accusation Against:
SACARIAS CRUZ
115 San Juan Grade Road
Salinas, CA 93907
Pharmacy Technician License No. TCH 111111
Respondent.

Case No. 4778

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 3, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4778 against Sacarias Cruz (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)
2. On or about August 2, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 111111 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4778 and will expire on January 31, 2015, unless renewed.
3. On or about October 15, 2013, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4778; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code

1 sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which at the time was:
2 648 North Street, Soledad, CA 93960. Respondent has since updated his address of record with
3 the Board to 115 San Juan Grade Road, Salinas, CA 93907.

4 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
5 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
6 thereto, are required to be reported and maintained with the Board.

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

9 6. On or about November 19, 2013, Respondent communicated by telephone with the
10 Office of the Attorney General, acknowledging receipt of the Accusation, and confirmed his
11 intent not to respond to the Accusation and to allow a default to be entered.

12 7. 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 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and thus waived his right to a hearing on the merits of Accusation No. 4778.

20 9. California Government Code section 11520 states, in pertinent part:

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

25 10. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on
file at the Board's offices, finds that the charges and allegations in Accusation No. 4778 are,
separately and severally, true and correct by clear and convincing evidence.

///

1 Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (Driving
2 Under the Influence of Alcohol/Drugs), a misdemeanor, with a further allegation of a prior DUI
3 conviction in Case No. MK076785A, and of violating Penal Code section 148, subdivision (a)(1)
4 (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor.

5 d. Respondent's License is subject to revocation pursuant to Business and Professions
6 Code section 4301(h) in that, as stated above, he used alcohol in a dangerous/injurious manner.

7 e. Respondent's License is subject to revocation pursuant to Business and Professions
8 Code section 4301(k) in that, as stated above, he had multiple convictions involving alcohol.

9 f. Respondent's License is subject to revocation pursuant to Business and Professions
10 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

11
12 ORDER

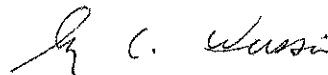
13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 111111, heretofore
14 issued to Respondent Sacarias Cruz, is revoked.

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

19 This Decision shall become effective on March 6, 2014.

20 It is so ORDERED ON February 4, 2014.

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 

25 By _____
26 STAN C. WEISSER
27 Board President

28 40850460.DOC
DOJ Matter ID:SF2013405500

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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3 JOSHUA A. ROOM
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Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4778

11 **SACARIAS CRUZ**
12 **648 North Street**
Soledad, CA 93960

ACCUSATION

13 **Pharmacy Technician License No. TCH 111111**

14 Respondent.
15

16 Complainant alleges:
17

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 August 2, 2011, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 111111 to Sacarias Cruz (Respondent). The License was in full effect at all
23 times relevant to the charges herein and will expire on January 31, 2015, unless renewed.
24

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 (Code) unless otherwise indicated.

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

2 “For the purpose of denial, suspension, or revocation of a personal or facility license
3 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
4 crime or act shall be considered substantially related to the qualifications, functions or duties of a
5 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
6 licensee or registrant to perform the functions authorized by her license or registration in a
7 manner consistent with the public health, safety, or welfare.”

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11
12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
15 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
16 substantially related crime(s), in that on or about October 19, 2004, in the criminal case *People v.*
17 *Sacarias Cruz*, Case No. MK076785A in Monterey County Superior Court, Respondent was
18 convicted of violating Vehicle Code section 23103.5, subdivision (a) (Reckless Driving Involving
19 Alcohol [“Wet Reckless’]), a misdemeanor. The conviction was entered as follows:

20 a. On or about September 23, 2004, based on an incident that took place on or
21 about June 8, 2004, Respondent was charged by criminal complaint in Case No. MK076785A
22 with violating (1) Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of
23 Alcohol/Drugs), a misdemeanor, (2) Vehicle Code section 23152, subdivision (b) (Driving With
24 Blood Alcohol of 0.08% or Higher), a misdemeanor, and (3) Vehicle Code section 23140,
25 subdivision (a) (Minor Driving with Blood Alcohol of 0.05% or Higher), a misdemeanor.

26 b. On or about October 19, 2004, the Complaint was amended orally by motion of
27 the District Attorney to add a fourth count, for violating (4) Vehicle Code section 23103.5,
28 subdivision (a) (Reckless Driving Involving Alcohol [“Wet Reckless’]), a misdemeanor.

1 c. Respondent entered a plea of guilty to count (4), and the remaining counts were
2 dismissed. Prior to entering his plea, Respondent was advised that in the event of a future arrest
3 and conviction for driving under the influence or with a blood alcohol of 0.08% or higher within
4 five (5) years, that this conviction would be charged as a prior conviction under Vehicle Code
5 section 23152, subdivision (a) or subdivision (b). The Court found a factual basis for the plea.

6 d. Imposition of sentence was suspended and Respondent was placed on probation
7 (conditional) for a period of three (3) years, on terms and conditions including time served of 1
8 day in county jail, a driver's license restriction for three (3) months, chemical testing and field
9 sobriety testing requirements, a 12-hour Wet Reckless Program, and payment of fines and fees.

10
11 SECOND CAUSE FOR DISCIPLINE

12 (Conviction of Substantially Related Crime(s))

13 12. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
14 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
15 substantially related crime(s), in that on or about October 28, 2004, in the criminal case *People v.*
16 *Sacarias Cruz*, Case No. MK076922A in Monterey County Superior Court, Respondent was
17 convicted of violating Vehicle Code section 20002, subdivision (a) (Hit and Run: Property
18 Damage), a misdemeanor, Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or
19 Obstructing Peace Officer), a misdemeanor, and Penal Code section 69 (Obstructing/Resisting
20 Executive Officer), a misdemeanor. The conviction was entered as follows:

21 a. On or about October 13, 2004, based on an incident that took place on or about
22 August 4, 2004 during which a vehicle driven by Respondent was left abandoned at the scene of
23 an accident after causing property damage, and Respondent was untruthful and evasive with the
24 police who were investigating the accident, Respondent was charged by criminal complaint in
25 Case No. MK076922A with violating (1) Vehicle Code section 20002, subdivision (a) (Hit and
26 Run: Property Damage), a misdemeanor, (2) Penal Code section 148, subdivision (a)(1)
27 (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor, and (3) Penal Code section
28 69 (Obstructing/Resisting Executive Officer), a misdemeanor.

1 c. On or about February 28, 2013, Respondent entered pleas of nolo contendere to
2 counts (1) and (3) of the Complaint, admitting the prior with regard to count (1), the Court found
3 that there was a factual basis for the plea, and Respondent was convicted. All remaining counts
4 were dismissed pursuant to the plea. Imposition of sentence was suspended and Respondent was
5 placed on probation (conditional) for a period of five (5) years, on terms and conditions including
6 45 days in county jail (4 days CTS) [eligible for Work Alternative Program], completion of a 2nd
7 Offender Drinking Driver Program, installation of automobile interlock device for one (1) year,
8 prohibition on driving without interlock device for that period, and payment of fines and fees.

9
10 FOURTH CAUSE FOR DISCIPLINE

11 (Dangerous or Injurious Use of Alcohol)

12 14. Respondent is subject to discipline under section 4301(h) of the Code, in that, as
13 described in paragraph(s) 11 and/or 13, he used alcohol in a dangerous or injurious manner.

14
15 FIFTH CAUSE FOR DISCIPLINE

16 (Multiple Convictions Involving Alcohol)

17 15. Respondent is subject to discipline under section 4301(k) of the Code, in that, as
18 described in paragraphs 11 and 13, he used alcohol in a dangerous or injurious manner.

19
20 SIXTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct)

22 16. Respondent is subject to discipline under section 4301 of the Code in that, as
23 described in paragraph(s) 11, 12, 13, and/or 14, Respondent engaged in unprofessional conduct.

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