1 2 3 4 5 6 7 8 BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS 9 STATE OF CALIFORNIA 10 11 Case No. 4778 In the Matter of the Accusation Against: 12 SACARIAS CRUZ 115 San Juan Grade Road 13 Salinas, CA 93907 **DEFAULT DECISION AND ORDER** 14 Pharmacy Technician License No. TCH 111111 15 [Gov. Code, §11520] Respondent. 16 FINDINGS OF FACT 17 1. On or about October 3, 2013, Complainant Virginia Herold, in her official capacity as 18 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed 19 Accusation No. 4778 against Sacarias Cruz (Respondent) before the Board of Pharmacy. (A copy 20 of the Accusation is attached as Exhibit A.) 21 2. On or about August 2, 2011, the Board of Pharmacy (Board) issued Pharmacy 22 Technician License No. TCH 111111 to Respondent. The Pharmacy Technician License was in 23 full force and effect at all times relevant to the charges brought in Accusation No. 4778 and will 24 expire on January 31, 2015, unless renewed. 25 On or about October 15, 2013, Respondent was served by Certified and First Class 26 Mail with copies of: Accusation No. 4778; a Statement to Respondent; a Notice of Defense (2) 27 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code 28

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

- 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board.
- 5. Service of the Accusation was effective as a matter of law under Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
- 6. On or about November 19, 2013, Respondent communicated by telephone with the Office of the Attorney General, acknowledging receipt of the Accusation, and confirmed his intent not to respond to the Accusation and to allow a default to be entered.
 - 7. Government Code section 11506 states, in pertinent part:
 - (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 8. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and thus waived his right to a hearing on the merits of Accusation No. 4778.
 - 9. California Government Code section 11520 states, in pertinent part:
 - (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.
- 10. 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, finds that the charges and allegations in Accusation No. 4778 are, separately and severally, true and correct by clear and convincing evidence.

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11. 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 are \$2,050.00 as of December 27, 2013.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Sacarias Cruz has subjected his Pharmacy Technician License No. TCH 111111 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 License 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. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about October 19, 2004, in *People v. Sacarias Cruz*, Case No. MK076785A in Monterey County Superior Court, Respondent was convicted of violating Vehicle Code section 23103.5, subdivision (a) (Reckless Driving Involving Alcohol ["Wet Reckless"]), a misdemeanor.
- b. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about October 28, 2004, in *People v. Sacarias Cruz*, Case No. MK076922A in Monterey County Superior Court, Respondent was convicted of violating Vehicle Code section 20002, subdivision (a) (Hit and Run: Property Damage), a misdemeanor, Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor, and Penal Code section 69 (Obstructing or Resisting Executive Officer), a misdemeanor.
- c. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about February 28, 2013, in *People v. Sacarias Cruz*, Case No. MK090397A in Monterey County Superior Court,

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.		
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12	<u>ORDER</u>		
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 STATE OF CALIFORNIA		
23			
24	By C. Weisser		
25	By STAN C. WEISSER		
26	Board President 40850460,DOC		
27	DOJ Matter ID:SF2013405500		
28	Attachment: Exhibit A: Accusation		

Exhibit A

Accusation

1 2 3 4 5 6 7 8	Kamala D. Harris Attorney General of California Frank H. Pacoe Supervising Deputy Attorney General Joshua A. Room Supervising Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFORE BOARD OF PH DEPARTMENT OF CON STATE OF CAL	ARMACY SUMER AFFAIRS	
10	T. D. Martin Call. A constitution of the const	Com No. 4779	
11	In the Matter of the Accusation Against: SACARIAS CRUZ	Case No. 4778	
12	648 North Street Soledad, CA 93960	ACCUSATION	
13	Pharmacy Technician License No. TCH 111111		
.14	Respondent.		
15			
16	Complainant alleges:		
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18	PARTI	 .	
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.		

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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

STATUTORY AND REGULATORY PROVISIONS

- 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (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.
- 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about October 19, 2004, in the criminal case *People v. Sacarias Cruz*, Case No. MK076785A in Monterey County Superior Court, Respondent was convicted of violating Vehicle Code section 23103.5, subdivision (a) (Reckless Driving Involving Alcohol ["Wet Reckless']), a misdemeanor. The conviction was entered as follows:
- a. On or about September 23, 2004, based on an incident that took place on or about June 8, 2004, Respondent was charged by criminal complaint in Case No. MK076785A with violating (1) Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/Drugs), a misdemeanor, (2) Vehicle Code section 23152, subdivision (b) (Driving With Blood Alcohol of 0.08% or Higher), a misdemeanor, and (3) Vehicle Code section 23140, subdivision (a) (Minor Driving with Blood Alcohol of 0.05% or Higher), a misdemeanor.
- b. On or about October 19, 2004, the Complaint was amended orally by motion of the District Attorney to add a fourth count, for violating (4) Vehicle Code section 23103.5, subdivision (a) (Reckless Driving Involving Alcohol ["Wet Reckless']), a misdemeanor.

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

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

SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 12. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about October 28, 2004, in the criminal case *People v. Sacarias Cruz*, Case No. MK076922A in Monterey County Superior Court, Respondent was convicted of violating Vehicle Code section 20002, subdivision (a) (Hit and Run: Property Damage), a misdemeanor, Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor, and Penal Code section 69 (Obstructing/Resisting Executive Officer), a misdemeanor. The conviction was entered as follows:
- a. On or about October 13, 2004, based on an incident that took place on or about August 4, 2004 during which a vehicle driven by Respondent was left abandoned at the scene of an accident after causing property damage, and Respondent was untruthful and evasive with the police who were investigating the accident, Respondent was charged by criminal complaint in Case No. MK076922A with violating (1) Vehicle Code section 20002, subdivision (a) (Hit and Run: Property Damage), a misdemeanor, (2) Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor, and (3) Penal Code section 69 (Obstructing/Resisting Executive Officer), a misdemeanor.

b. On or about October 28, 2004, Respondent entered a plea of guilty and was convicted of all three charges. Imposition of sentence was suspended and Respondent was placed on probation (conditional) for a period of three (3) years, on terms and conditions including thirty (30) days in jail (eligible for Work Alternative Program), and payment of fines and fees.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

- 13. Respondent is subject to discipline under section 4301(1) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about February 28, 2013, in the criminal case *People v. Sacarias Cruz*, Case No. MK090397A in Monterey County Superior Court, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/ Drugs), a misdemeanor, with a further allegation of a prior DUI conviction in Case No. MK076785A, and of violating Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor. The conviction was entered as follows:
- a. On or about January 27, 2013, officer(s) observed a car driven by Respondent going through a stop sign at a high rate of speed. When the officer(s) conducted a traffic stop, Respondent was uncooperative, actively resisted the officer(s), and made threats of harm and/or blackmail. An odor of alcohol emanated from Respondent and his passenger, and they each exhibited objective symptoms of intoxication. Officer(s) observed an open case of beer in the back seat and several open and empty bottles scattered on the floorboards of the vehicle.
- b. On or about January 28, 2013, Respondent was charged by criminal complaint in Case No. MK090397A with violating (1) Vehicle Code section 23152, subdivision (a) (Driving Under the Influence of Alcohol/ Drugs), a misdemeanor, with a further allegation of a prior DUI conviction in Case No. MK076785A, (2) Penal Code section 69 (Resisting Executive Officer), a misdemeanor, (3) Penal Code section 148, subdivision (a)(1) (Resisting, Delaying, or Obstructing Peace Officer), a misdemeanor, and (4) Vehicle Code section 23222, subdivision (a) (Possession of Open Container While Driving), an infraction.

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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.		
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0	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.		
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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.		
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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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DISCIPLINE CONSIDERATIONS

17. To determine the appropriate degree of license discipline, if any, to be imposed on Respondent, Complainant further alleges that on or about November 10, 2012, in San Jose, CA, Respondent was cited (issued a ticket/Notice to Appear) by the San Jose Police Department for violating San Jose Municipal Code section SJ-10.12.010-I (Public Intoxication), an infraction.

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 License No. TCH 111111, issued to Sacarias Cruz (Respondent);
- 2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 10/3/13	VIRGINIA HEROLD
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Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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