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

11 In the Matter of the Accusation Against:

Case No. 4783

12 **NICK KARPACHINSKI**
13 **1340 Pinnacle Peak**
14 **Chula Vista, CA 91915**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Pharmacist License No. RPH 33217**

15 Respondent.

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17 **FINDINGS OF FACT**

18 1. On or about September 6, 2013, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4783 against Nick Karpachinski (Respondent) before the Board of Pharmacy.
21 (The Accusation is attached as Exhibit A.)

22 2. On or about August 16, 1979, the Board of Pharmacy (Board) issued Pharmacist
23 License No. RPH 33217 to Respondent. The Pharmacist License was in full force and effect at
24 all times relevant to the charges brought in Accusation No. 4783 and will expire on July 31, 2015,
25 unless renewed.

26 3. On or about September 19, 2013, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 4783, Statement to Respondent, Notice of Defense, Request
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
3 and maintained with the Board. Respondent's address of record was and is:

4 1340 Pinnacle Peak
5 Chula Vista, CA 91915

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

9 5. On or about September 21, 2013, Respondent signed the Domestic Return Receipt for
10 the aforementioned documents served by Certified Mail acknowledging receipt.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 4783.

20 8. 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 9. 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 regarding the allegations contained in Accusation No. 4783, finds that
the charges and allegations in Accusation No. 4783 are separately and severally, found to be true
and correct by clear and convincing evidence.

10. 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 is \$372.50 as of October 15, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Nick Karpachinski has subjected his Pharmacist License No. RPH 33217 to discipline.

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

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License based upon the following violations alleged in the Accusation which are supported by the Default Decision Investigatory Evidence Packet in this case.

a. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) of the Code in that on or about July 30, 2012, in a criminal proceeding entitled *People of the State of California v. Nick Karpachinski*, in San Diego County Superior Court, case number S257814, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or higher, a crime that is substantially related to the qualifications, duties, and functions of a pharmacist.

b. Respondent has subjected his registration to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that on or about May 8, 2012, Respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself, and to others, in that he operated a motor vehicle while significantly impaired and caused a collision.

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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 January 17, 2014.

It is so ORDERED ON December 18, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Stan C. Weiss
STAN C. WEISSER
Board President

DOJ Matter ID: SD2013705532

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

12 In the Matter of the Accusation Against:

Case No. 4783

13 **NICK KARPACHINSKI**
14 **1340 Pinnacle Peak**
Chula Vista, CA 91915

A C C U S A T I O N

15 **Pharmacist License No. RPH 33217**

16 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about August 16, 1979, the Board of Pharmacy issued Pharmacist License
24 Number RPH 33217 to Nick Karpachinski (Respondent). The Pharmacist License was in full
25 force and effect at all times relevant to the charges brought herein and will expire on July 31,
26 2015, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, 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 PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"
4 and "registration."

5 9. Section 4301 of the Code states:

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

10

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

16

17 (i) The conviction of a crime substantially related to the qualifications,
18 functions, and duties of a licensee under this chapter. The record of conviction of a
19 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
20 States Code regulating controlled substances or of a violation of the statutes of this
21 state regulating controlled substances or dangerous drugs shall be conclusive
22 evidence of unprofessional conduct. In all other cases, the record of conviction shall
23 be conclusive evidence only of the fact that the conviction occurred. The board may
24 inquire into the circumstances surrounding the commission of the crime, in order to
25 fix the degree of discipline or, in the case of a conviction not involving controlled
26 substances or dangerous drugs, to determine if the conviction is of an offense
27 substantially related to the qualifications, functions, and duties of a licensee under this
28 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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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

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(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

11. 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 his license or registration in a manner consistent with the public health, safety, or welfare.

COSTS

12. 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 or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(July 30, 2012 Criminal Conviction for DUI on May 8, 2012)**

3 13. Respondent has subjected his license to discipline under sections 490 and 4301,
4 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
5 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

6 a. On or about July 30, 2012, in a criminal proceeding entitled *People of the State*
7 *of California v. Nick Karpachinski*, in San Diego County Superior Court, case number S257814,
8 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152,
9 subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or higher, a
10 misdemeanor. Respondent admitted and the court found true the special allegation that his BAC
11 was .15 percent or more, within the meaning of Vehicle Code section 23578. Pursuant to the plea
12 agreement, the court dismissed an additional count of violating Vehicle Code section 23152,
13 subdivision (a), driving under the influence of alcohol/drugs.

14 b. As a result of the conviction, on or about July 30, 2012, Respondent was
15 granted five years summary probation, and ordered to complete 10 days in the Public Service
16 Program, with credit for one day, complete a three-month First Conviction Program and a MADD
17 Victim Impact Panel, pay fees, fines and restitution, and comply with DUI probation terms. The
18 court certified Respondent's BAC as .22 percent.

19 c. The facts that led to the conviction are that on or about the afternoon of May 8,
20 2012, a patrol officer with the Chula Vista Police Department was dispatched to a report of a non-
21 injury collision involving Respondent and another driver. Upon arrival, the officer motioned for
22 Respondent to come to the officer's location; Respondent staggered across the road. The officer
23 observed that Respondent's speech was slurred, he seemed confused, and there was a strong odor
24 of an alcoholic beverage on his breath. The officer had Respondent sit on the curb to avoid
25 falling down and injuring himself. Respondent admitted that he had consumed beer prior to
26 driving, and various prescription medications within the previous 24 hours. Respondent was
27 unable to safely perform the field sobriety tests, so they were discontinued by the officer.
28 Respondent was arrested for driving under the influence of alcohol or drugs.

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