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

In the Matter of the Accusation Against:
BRANDON ABILLE FULINARA
17173 Big Oak Lane
Yorba Linda, CA 92886
Pharmacy Technician Registration No. TCH
94185

Respondent.

Case No. 4820
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 1, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4820 against Brandon Abille Fulinara (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 9, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 94185 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4820 and will expire on July 31, 2015, unless renewed.

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1 3. On or about November 1, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4820, 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 17173 Big Oak Lane, Yorba Linda, CA 92886.

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. The aforementioned documents were not returned by the U.S. Postal Service.

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 4820.

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. 4820, finds that
the charges and allegations in Accusation No. 4820, are separately and severally, found to be true
and correct by clear and convincing evidence.

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SD2013705572

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4820

12 **BRANDON ABILLE FULLINARA**
13 **17173 Big Oak Lane**
14 **Yorba Linda, CA 92886**

ACCUSATION

15 **Pharmacy Technician Registration**
No. TCH 94185

16
17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about November 9, 2009, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 94185 to Brandon Abille Fullinara (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on July 31, 2015, unless renewed.

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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4301 of the Code states:

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

20 (j) The violation of any of the statutes of this state, or any other state, or
21 of the United States regulating controlled substances and dangerous drugs.

22 (o) Violating or attempting to violate, directly or indirectly, or assisting in
23 or abetting the violation of or conspiring to violate any provision or term of this
24 chapter or of the applicable federal and state laws and regulations governing
25 pharmacy, including regulations established by the board or by any other state or
26 federal regulatory agency.

27 7. Section 4022 of the Code states

28 "Dangerous drug" or "dangerous device" means any drug or device unsafe
for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits
dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this
device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

1 (c) Any other drug or device that by federal or state law can be lawfully
dispensed only on prescription or furnished pursuant to Section 4006.

2 8. Section 4060 of the Code provides in pertinent part, that no person shall possess any
3 controlled substance, except that furnished to a person upon the prescription of a physician,
4 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

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

6 For the purpose of denial, suspension, or revocation of a personal or
7 facility license pursuant to Division 1.5 (commencing with Section 475) of the
8 Business and Professions Code, a crime or act shall be considered substantially related
9 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.

10 COST RECOVERY

11 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 DRUGS

18 11. Methylenedioxy amphetamine, commonly known as Ecstasy (MDMA), is a
19 Schedule I controlled substance as designated by Health and Safety Code section 11554(d)(6) and
20 is a dangerous drug pursuant to Business and Professions Code section 4022.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Illegal Possession of a Controlled Substance – Ecstasy –**
3 **on January 31, 2013)**

4 12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
5 (o) of the Code on the grounds of unprofessional conduct, in that he illegally possessed the
6 controlled substance and dangerous drug Ecstasy (MDMA) without a prescription in violation of
7 section 4060 of the Code and Health and Safety Code section 11377(a). The circumstances are as
8 follows:

9 13. On January 31, 2013, at approximately 12:00 a.m., Fullerton Police Department
10 Officers observed a black Mazda traveling eastbound on Yorba Linda Boulevard west of Sapphire
11 Road in Fullerton, California, and observed the vehicle straddling the traffic lane which caused
12 another vehicle to abruptly change lanes to avoid a traffic collision. Officers initiated a traffic stop
13 and made contact with the driver (Respondent). Officers smelled a faint odor of an alcoholic
14 beverage emitting from inside the vehicle and noticed Respondent's eyes were bloodshot, red and
15 watery. Respondent denied to officers that he drank alcohol that evening.

16 14. Officers directed Respondent to exit the vehicle. Respondent complied to a consent
17 search of his person. Respondent told officers that there was a Gatorade bottle inside the vehicle
18 that contained a mixture of Gatorade and alcohol. Respondent told officers that there had been a
19 couple of "shady guys" in his vehicle earlier in the day and that the "shady guys" may have left
20 "something" inside the vehicle and defined the "something" as "ecstasy pills in the glove box."

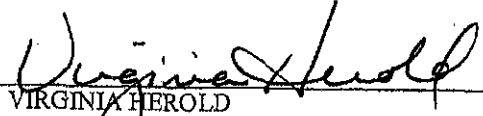
21 15. Officers conducted a search of Respondent's vehicle and located a Bank of America
22 envelope in the vehicle's glove compartment which contained a clear plastic bag that held 155
23 small circular yellow pills which officers identified through their training and experience as
24 "Ecstasy." Officers continued searching the vehicle and located a clear plastic bag containing 100
25 clear plastic baggies which indicated to officers that the baggies, combined with the ecstasy pills,
26 were indicative of possession with the intent to sell.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 10/21/13



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

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