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

In the Matter of the Accusation Against:  
**RICHARD E. GUILLEN**  
**3598 Mustard Seed Lane**  
**El Centro, CA 92243**  
**Pharmacy Technician Registration**  
**No. TCH 58328**  
  
Respondent.

Case No. 4952  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about February 15, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4952 against Richard E. Guillen (Respondent) before the Board of Pharmacy. (A copy of the Accusation attached as Exhibit A.)
2. On or about September 1, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 58328 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4952. The Pharmacy Technician Registration expired on February 28, 2014. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a license shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or

1 disciplinary proceeding against, the licensee or to render a decision suspending or revoking the  
2 license.

3 3. On or about March 5, 2014, Respondent was served by Certified and First Class Mail  
4 copies of the Accusation No. 4952, Statement to Respondent, Notice of Defense, Request for  
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100  
7 and California Code of Regulations, title 16, section 1704, is required to be reported and  
8 maintained with the Board. Respondent's address of record was and is:

9 3598 Mustard Seed Lane  
10 El Centro, CA 92243

11 4. Service of the Accusation was effective as a matter of law under the provisions of  
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
13 124.

14 5. On or about March 5, 2014, Respondent was also served by Certified and First Class  
15 Mail copies of the Accusation No. 4952, Statement to Respondent, Notice of Defense, Request  
16 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
17 11507.7) at an alternate address for Respondent which is:

18 307 Quail Run  
19 El Centro, CA 92243

20 6. On or about March 11, 2013, "Gloria Guillen" signed the Domestic Return Receipt  
21 and received the aforementioned documents served to Respondent's alternate address.

22 7. Government Code section 11506 states, in pertinent part:

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

28 8. Respondent failed to file a Notice of Defense within 15 days after service upon him  
of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
4952.

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

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

6 10. Pursuant to its authority under Government Code section 11520, the Board finds  
7 Respondent is in default. The Board will take action without further hearing and, based on the  
8 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
9 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
10 file at the Board's offices regarding the allegations contained in Accusation No. 4952, finds that  
11 the charges and allegations in Accusation No. 4952, are separately and severally, found to be true  
12 and correct by clear and convincing evidence.

13 11. Taking official notice of its own internal records, pursuant to Business and  
14 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
15 and Enforcement is \$552.50 as of April 4, 2014.

#### 16 **DETERMINATION OF ISSUES**

17 1. Based on the foregoing findings of fact, Respondent Richard E. Guillen has subjected  
18 his Pharmacy Technician Registration No. TCH 58328 to discipline.

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

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

23 a. Respondent has subjected his registration to discipline under sections 490 and  
24 4301, subdivision (l) of the Code in that on or about June 28, 2013, in a criminal proceeding  
25 entitled *People of the State of California v. Richard Edward Guillen*, in Imperial County Superior  
26 Court, case number ECM35087, Respondent was convicted on his plea of no contest to violating  
27 Vehicle Code section 23103, subdivision (a), alcohol-related reckless driving, a count substituted  
28 in place of the original counts of violating Vehicle Code section 23152, subdivision (a), driving  
under the influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving

1 with a blood alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section  
2 23103.5, a crime that is substantially related to the qualifications, duties, and functions of a  
3 pharmacy technician.

4 b. Respondent has subjected his registration to discipline under sections 490 and  
5 4301, subdivision (l) of the Code in that on or about June 28, 2013, in a criminal proceeding  
6 entitled *People of the State of California v. Richard Edward Guillen*, in Imperial County Superior  
7 Court, case number ECM37626, Respondent was convicted on his plea of no contest to violating  
8 Vehicle Code section 23103, subdivision (a), alcohol-related reckless driving, a count substituted  
9 in place of the original counts of violating Vehicle Code section 23152, subdivision (a), driving  
10 under the influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving  
11 with a blood alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section  
12 23103.5, a crime that is substantially related to the qualifications, duties, and functions of a  
13 pharmacy technician.

14 c. Respondent has subjected his registration to discipline under sections 490 and  
15 4301, subdivision (l) of the Code in that on or about June 28, 2013, in a criminal proceeding  
16 entitled *People of the State of California v. Richard Edward Guillen*, in Imperial County Superior  
17 Court, case number JCF31186, Respondent was convicted on his plea of no contest to violating  
18 Penal Code section 273.5, subdivision (a), corporal injury to a spouse/cohabitant/child's parent, a  
19 felony, a crime that is substantially related to the qualifications, duties, and functions of a  
20 pharmacy technician.

21 d. Respondent has subjected his registration to disciplinary action under section  
22 4301, subdivision (h) of the Code for unprofessional conduct in that on or about September 1,  
23 2011, Respondent operated a motor vehicle with a BAC of .23/.24 percent, and on October 11,  
24 2012, he operated a motor vehicle with a BAC of .16/.17 percent

25 e. Respondent has subjected his registration to disciplinary action under sections  
26 4301, subdivision (k) of the Code for unprofessional conduct in that on or about June 28, 2013,  
27 Respondent was convicted of two separate violations of Vehicle Code section 23103, subdivision  
28 (a), alcohol-related reckless driving.

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**ORDER**

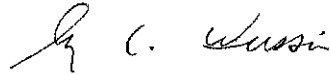
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 58328, heretofore issued to Respondent Richard E. Guillen, is revoked.

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 May 30, 2014.

It is so ORDERED on April 30, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

DOJ Matter ID: SD2013706167

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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. 4952

13 **RICHARD E. GUILLEN**  
14 **3598 Mustard Seed Lane**  
**El Centro, CA 92243**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 58328**

17 Respondent.

18  
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 September 1, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 58328 to Richard E. Guillen (Respondent). A temporary Pharmacy  
25 Technician Registration was issued for 150 days pursuant to section 17520 of the Family Code.  
26 The Pharmacy Technician Registration was in full force and effect at all times relevant to the  
27 charges brought herein and will expire on February 28, 2014, unless renewed.

28 ///

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 (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 license  
9 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 6. Section 490.5 of the Code states: "A board may suspend a license pursuant to Section  
15 17520 of the Family Code if a licensee is not in compliance with a child support order or  
16 judgment."

17 **STATUTORY PROVISIONS**

18 7. Section 482 of the Code states:

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

- 21 (a) Considering the denial of a license by the board under Section 480; or
- 22 (b) Considering suspension or revocation of a license under Section 490.

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

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

9. 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



1 license, upon the ground that the applicant or the licensee has been convicted of a crime  
2 substantially related to the qualifications, functions, and duties of the licensee in  
3 question, the record of conviction of the crime shall be conclusive evidence of the fact  
4 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 to fix the degree of  
discipline or to determine if the conviction is substantially related to the qualifications,  
functions, and duties of the licensee in question.

5 As used in this section, "license" includes "certificate," "permit," "authority," and  
6 "registration."

7 10. Section 4301 of the Code states:

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

11 .....

12 (h) The administering to oneself, of any controlled substance, or the use of any  
13 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous  
14 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.

15 .....

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

18 (l) The conviction of a crime substantially related to the qualifications, functions,  
19 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  
20 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  
21 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  
22 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  
23 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  
24 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  
25 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  
26 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.

27 .....

1 **REGULATORY PROVISIONS**

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

3 . . . .

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

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

9 (2) Total criminal record.

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

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

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

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

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

22 **COSTS**

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

**FIRST CAUSE FOR DISCIPLINE**

**(June 28, 2013 Criminal Conviction for Alcohol-Related Reckless Driving on September 1, 2011)**

14. Respondent has subjected his registration to discipline under sections 490 and 4301,  
subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
2 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number  
3 ECM35087, Respondent was convicted on his plea of no contest to violating Vehicle Code  
4 section 23103, subdivision (a), alcohol-related reckless driving, a count substituted in place of the  
5 original counts of violating Vehicle Code section 23152, subdivision (a), driving under the  
6 influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving with a blood  
7 alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section 23103.5.

8 b. As a result of the conviction, on or about June 28, 2013, Respondent was  
9 granted three years summary probation, and ordered to pay fines and fees, and comply with DUI  
10 probation terms.

11 c. The facts that led to the conviction are that at approximately 1:38 in the  
12 morning, on or about September 1, 2011, officers with the California Highway Patrol (CHP) were  
13 on patrol when they observed the El Centro Police Department on a traffic stop with Respondent  
14 on an Interstate 5 off-ramp. The El Centro police officer requested that the CHP officers conduct  
15 a DUI investigation. Upon contact with Respondent, the CHP officers observed that there was a  
16 strong odor of an alcoholic beverage on Respondent's breath, his eyes were red and watery, his  
17 speech was thick and slurred, he was unsteady on his feet, and his demeanor was volatile.  
18 Respondent was administered a series of field sobriety tests which he was unable to perform as  
19 explained and demonstrated by the officers. Respondent was arrested for driving under the  
20 influence. During booking he provided two breath samples which were analyzed with a BAC of  
21 .23 and .24 percent, respectively.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(June 28, 2013 Criminal Conviction for Alcohol-Related Reckless Driving on October 11, 2012)**

24 15. Respondent has subjected his registration to discipline under sections 490 and 4301,  
25 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
26 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

27 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
28 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number

1 ECM37626, Respondent was convicted on his plea of no contest to violating Vehicle Code  
2 section 23103, subdivision (a), alcohol-related reckless driving, a count substituted in place of the  
3 original counts of violating Vehicle Code section 23152, subdivision (a), driving under the  
4 influence of alcohol/drugs, and Vehicle Code section 23152, subdivision (b), driving with a blood  
5 alcohol concentration (BAC) of .08 or more, pursuant to Vehicle Code section 23103.5.

6 b. As a result of the conviction, on or about June 28, 2013, Respondent was  
7 granted three years summary probation, and ordered to pay fines and fees, and comply with DUI  
8 probation terms.

9 c. The facts that led to the conviction are that on or about October 11, 2012, at  
10 approximately 2:15 in the morning, CHP officers observed a vehicle driven by Respondent  
11 drifting in and out of his lane of travel. After conducting a traffic stop, the CHP officers made  
12 contact with Respondent and observed that there was a strong odor of an alcoholic beverage on  
13 Respondent's breath, his eyes were red and watery, and his speech was slurred. Respondent was  
14 administered a series of field sobriety tests which he was unable to perform as explained and  
15 demonstrated by the officers. Respondent was arrested for driving under the influence.  
16 Respondent provided two breath samples which were analyzed by the PEBT device with a BAC  
17 of .17 and .16 percent, respectively.

### 18 THIRD CAUSE FOR DISCIPLINE

#### 19 **(June 28, 2013 Criminal Conviction for Corporal Injury to a Spouse on June 16, 2013)**

20 16. Respondent has subjected his registration to discipline under sections 490 and 4301,  
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about June 28, 2013, in a criminal proceeding entitled *People of the State*  
24 *of California v. Richard Edward Guillen*, in Imperial County Superior Court, case number  
25 JCF31186, Respondent was convicted on his plea of no contest to violating Penal Code section  
26 273.5, subdivision (a), corporal injury to a spouse/cohabitant/child's parent, a felony. Pursuant to  
27 a plea agreement, the court dismissed an additional count of violating Penal Code section 273.6,  
28 subdivision (a), disobeying a domestic relations court order, a felony.



1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Multiple Alcohol-Related Convictions)**

3 18. Respondent has subjected his registration to disciplinary action under sections 4301,  
4 subdivision (k) of the Code for unprofessional conduct in that on or about June 28, 2013,  
5 Respondent was convicted of two separate violations of Vehicle Code section 23103, subdivision  
6 (a), alcohol-related reckless driving, as described in paragraphs 14 and 15, above.

7 **PRAYER**

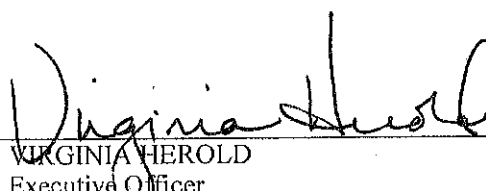
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
9 and that following the hearing, the Board of Pharmacy issue a decision:

10 1. Revoking or suspending Pharmacy Technician Registration Number TCH 58328,  
11 issued to Richard E. Guillen;

12 2. Ordering Richard E. Guillen to pay the Board of Pharmacy the reasonable costs of the  
13 investigation and enforcement of this case, pursuant to Business and Professions Code section  
14 125.3;

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

16  
17  
18 DATED: 2/15/14

  
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

25 SD2013706167