

1
2
3
4
5
6
7
8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4963

13 **ALEXIS VARGAS**
14 577 Santa Mariana Ave.
15 La Puente, CA 91746

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Pharmacy Technician Registration No. TCH**
17 **122297**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about February 15, 2014, Complainant Virginia Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 4963 against Alexis Vargas (Respondent) before the Board of Pharmacy.
22 (Accusation attached as Exhibit A.)

23 2. On or about April 2, 2012, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 122297 to Respondent. The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought in Accusation No. 4963,
26 but expired on March 31, 2014, and has been cancelled.

27 ///

28 ///

1 3. On or about March 4, 2014, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 4963, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 577 Santa Mariana Ave.
8 La Puente, CA 91746.

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

12 5. On or about March 29, 2014, the aforementioned documents were returned by the
13 U.S. Postal Service marked "Return to Sender. Unclaimed. Unable to Forward. Return to Sender."

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4963.

23 8. California Government Code section 11520 states, in pertinent part:

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

28 9. 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

1 file at the Board's offices regarding the allegations contained in Accusation No. 4963, finds that
2 the charges and allegations in Accusation No. 4963, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1,650.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Alexis Vargas has subjected his
9 Pharmacy Technician Registration No. TCH 122297 to discipline.

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

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
12 Registration based upon the following violations alleged in the Accusation which are supported
13 by the evidence contained in the Default Decision Evidence Packet in this case:

14 a. Business and Professions Code sections 4300 and 4301 (l) – Unprofessional Conduct
15 -Conviction of Substantially Related Crime;

16 b. Business and Professions Code sections 4300 and 4301 (k) – Unprofessional Conduct
17 - Convictions Involving Alcohol;

18 c. Business and Professions Code sections 4300 and 4301 (h) – Unprofessional Conduct
19 – Dangerous Use of Alcohol;

20 d. Business and Professions Code section 4301 – Unprofessional Conduct/Violation of
21 Licensing Chapter.

22 ORDER

23 *IT IS SO ORDERED* that Pharmacy Technician Registration No. TCH 122297, heretofore
24 issued to Respondent Alexis Vargas, is revoked.

25 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
26 written motion requesting that the Decision be vacated and stating the grounds relied on within
27 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

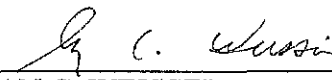
28 ///

1 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

2 This Decision shall become effective on October 6, 2014.

3 It is so ORDERED September 4, 2014.

4 BOARD OF PHARMACY
5 DEPARTMENT OF CONSUMER AFFAIRS
6 STATE OF CALIFORNIA

7 By 

8 STAN C. WEISSER
9 Board President

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 Attachment:
28 Exhibit A: Accusation

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY SALUTE
Supervising Deputy Attorney General
3 DESIREE ANNE TULLENERS
Deputy Attorney General
4 State Bar No. 157464
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-8944
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4963

12 **ALEXIS VARGAS**
577 Santa Mariana Ave.
13 La Puente, CA 91746

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 122297

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 2, 2012, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 122297 to Alexis Vargas (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on March 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following laws.
27 All section references are to the Business and Professions Code unless otherwise indicated.
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2

3
4
5
6

7
8
9
10

11
12
13
14
15
16

17
18

19

20
21
22
23
24

25

26
27
28

1
2 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
3 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
4 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
5 to the extent that the use impairs the ability of the person to conduct with safety to the public the
6 practice authorized by the license.

7
8 "(k) The conviction of more than one misdemeanor or any felony involving the use,
9 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
10 combination of those substances.

11 "(l) The conviction of a crime substantially related to the qualifications, functions, and
12 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
14 substances or of a violation of the statutes of this state regulating controlled substances or
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
17 The board may inquire into the circumstances surrounding the commission of the crime, in order to
18 fix the degree of discipline or, in the case of a conviction not involving controlled substances or
19 dangerous drugs, to determine if the conviction is of an offense substantially related to the
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
22 of this provision. The board may take action when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
27 indictment.

1 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by the
4 board or by any other state or federal regulatory agency."

5 REGULATORY PROVISIONS

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

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

13 COST RECOVERY

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

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of Substantially Related Crime)

22 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
23 490, in conjunction with California Code of Regulations, title 16, section 1770 in that on or around
24 August 29, 2013, Respondent was convicted of one misdemeanor count of violating Vehicle Code
25 section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his
26 blood] and one misdemeanor count of Vehicle Code section 14601.2, subdivision (a) [driving
27 while driving privileges are suspended or revoked with knowledge] in a criminal proceeding
28 entitled *The People of the State of California v. Alexis Vargas* (Super. Ct. Los Angeles County,

1 Case No. 3JB04931.) The circumstances underlying the conviction are that on or about May 19,
2 2013, Irwindale Police Department officers encountered Respondent inside a vehicle that had
3 sustained extensive damage after colliding with a tree. While speaking to Respondent, the officers
4 detected objective signs of intoxication and he was ordered to take a field sobriety test, which he
5 failed. Respondent was subsequently arrested and during the booking procedure, his blood
6 alcohol was determined to be 0.12%. As a result of the conviction, the Court sentenced
7 Respondent to serve 30 days in Los Angeles County Jail and placed him on 5 years probation
8 subject to terms and conditions.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Convictions Involving Alcohol)**

11 11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
12 (k), in that he suffered a second conviction involving the use of alcohol. Complainant refers to and
13 by this reference incorporates the allegations set forth above in paragraph 10, as though set forth
14 fully.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Dangerous Use of Alcohol)**

17 12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision
18 (h), in that Respondent used alcoholic beverages to an extent or in a manner dangerous or
19 injurious to himself, any person, or the public when he operated a vehicle while having a blood
20 alcohol level of 0.12%. Complainant refers to and by this reference incorporates the allegations
21 set forth above in paragraph 10, as though set forth fully.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

24 13. Respondent is subject to disciplinary action under section 4301, (o), in that
25 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
26 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
27 in paragraphs 10 through 12, inclusive, as though set forth fully.

28

1 DISCIPLINARY CONSIDERATIONS

2 14. In order to determine the degree of discipline to impose on Respondent, Complainant
3 alleges the following:

4 a. On or about June 20, 2013, the Board issued Citation and Fine No. CI 2012
5 53818 to Respondent for violating section 4301, subdivisions (f), (h), (l), and (j). The total
6 amount of the fine was \$300 and Respondent has yet to comply.

7 b. On or about November 27, 2012, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having
9 0.08% or more, by weight, of alcohol in his blood] in a criminal proceeding entitled *The People of*
10 *the State of California v. Alexis Vargas* (Super. Ct. Los Angeles County, Case No. 2PK04701.)
11 The circumstances underlying the conviction are that on or about September 13, 2012,
12 Respondent drove a motor vehicle with a blood alcohol level of at least .08%. As a result of the
13 conviction, the Court sentenced Respondent to serve 13 days in Los Angeles County Jail and
14 placed him on 36 months probation subject to terms and conditions.

15 c. On or about November 28, 2012, Respondent was convicted of one
16 misdemeanor count of violating Penal Code section 415, subdivision (1) [fighting in a public place]
17 in a criminal proceeding entitled *The People of the State of California v. Alexis Vargas* (Super. Ct.
18 San Bernardino County, Case No. MVA1202564.) As a result of the conviction, Respondent was
19 ordered to pay a fine.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board issue a decision:

23 1. Revoking or suspending Pharmacy Technician Registration No. TCH 122297, issued
24 to Alexis Vargas;

25 2. Ordering Alexis Vargas to pay the Board the reasonable costs of the investigation and
26 enforcement of this case, pursuant to section 125.3; and

27 ///

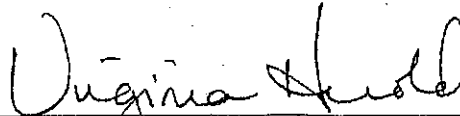
28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

DATED:

2/15/14



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

LA2013510514
51423141.doc