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

In the Matter of the Accusation Against:

LILLY JAZMINE CUXIM
1215 Paddington Way
San Jose, CA 95127

Pharmacy Technician License No. TCH 107490

Respondent.

Case No. 4978

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 4, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4978 against Lilly Jazmine Cuxim (Respondent) before the Board of Pharmacy.

(A copy of the Accusation is attached as exhibit A.)

2. On or about October 13, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 107490 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4978 and will expire on May 31, 2014, unless renewed

3. On or about February 11, 2014, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4978; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code

1 sections 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is:
2 1215 Paddington Way, San Jose, CA 95127. On or about February 13, 2014, the Certified Mail
3 Return Receipt card associated with the Certified Mail delivery of these materials was signed and
4 returned by "Lilly Cuxim," apparently demonstrating receipt of the materials by Respondent.

5 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California
6 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes
7 thereto, are required to be reported and maintained with the Board.

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

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4978.

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

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

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 4978, finds that
28 the charges and allegations in Accusation No. 4978, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$1,637.50 as of March 20, 2014.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Lilly Jazmine Cuxim has
6 subjected her Pharmacy Technician License No. TCH 107490 to discipline.

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

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

11 a. Respondent's License is subject to revocation pursuant to Business and Professions
12 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
13 section 1770, for the conviction of substantially related crime(s), in that on or about September
14 17, 2013, in *People v. Lilly Jazmine Cuxim*, Case No. C1358446 in Santa Clara County Superior
15 Court, Respondent was convicted of violating Vehicle Code section 23152(a) (Driving Under
16 Influence of Alcohol or Drugs), a misdemeanor, with an admitted special allegation that, at the
17 time of her April 21, 2013 arrest, Respondent willfully refused a peace officer's request to submit
18 to, and willfully failed to complete, the chemical test(s) pursuant to Vehicle Code sections 23612
19 and 23157, within the meaning of Vehicle Code section 23577, subdivision (a).

20 b. Respondent's License is subject to revocation pursuant to Business and Professions
21 Code section 4301(h) in that, as stated above, she used alcohol in a dangerous/injurious manner.

22 c. Respondent's License is subject to revocation pursuant to Business and Professions
23 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

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ORDER

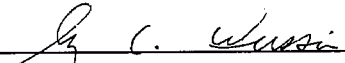
IT IS SO ORDERED that Pharmacy Technician License No. TCH 107490, heretofore issued to Respondent Lilly Jazmine Cuxim, is revoked.

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 19, 2014.

It is so ORDERED April 17, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

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DOJ Matter ID:SF2013406212

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 JOSHUA A. ROOM
Supervising Deputy Attorney General
4 State Bar No. 214663
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1299
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 4978

11 **LILLY JAZMINE CUXIM**
12 **1215 Paddington Way**
13 **San Jose, CA 95127**

ACCUSATION

14 **Pharmacy Technician License No. TCH 107490**

15 Respondent.

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 20 2. On or about October 13, 2010, the Board of Pharmacy issued Pharmacy Technician
21 License No. TCH 107490 to Lilly Jazmine Cuxim (Respondent). The License was in force and
22 effect at all times relevant to the charges herein and will expire on May 31, 2014, unless renewed.

23
24 JURISDICTION

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

28 ///

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by her license or registration in a manner
4 consistent with the public health, safety, or welfare.”

5
6 COST RECOVERY

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

10
11 FIRST CAUSE FOR DISCIPLINE

12 (Conviction of Substantially Related Crime(s))

13 11. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
14 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
15 substantially related crime(s), in that on or about September 17, 2013, in the criminal case *People*
16 *v. Lilly Jazmine Cuxim*, Case No. C1358446 in Santa Clara County Superior Court, Respondent
17 was convicted of violating Vehicle Code section 23152(a) (Driving Under Influence of Alcohol or
18 Drugs), a misdemeanor, with an admitted special allegation that, at the time of her April 21, 2013
19 arrest, Respondent willfully refused a peace officer’s request to submit to, and willfully failed to
20 complete, the chemical test(s) pursuant to Vehicle Code sections 23612 and 23157, within the
21 meaning of Vehicle Code section 23577, subdivision (a). The conviction was entered as follows:

22 a. On or about April 21, 2013, officer(s) for the San Jose (CA) Police Department
23 were nearly struck in a marked patrol car by Respondent’s vehicle as she failed to stop at a red
24 light. The officer(s) observed Respondent’s vehicle make an erratic left turn, nearly driving onto
25 the curb and sidewalk and causing nearby pedestrians to scatter. The officer(s) conducted a traffic
26 stop. Respondent exhibited signs of intoxication, had the odor of alcohol on her breath, and
27 performed poorly on Field Sobriety Exercises (FSEs). A preliminary alcohol screening (PAS)
28 device measured a blood alcohol content of 0.235%. Respondent refused a chemical blood test.

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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: 2/4/14 

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

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