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8		RE THE PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
10			
11	In the Matter of the Accusation Against:	Case No. 5074	
12			
13	SHERRY ANN RECKLAU	DEFAULT DECISION AND ORDER	
14	12088 Short Street Lakeside, CA 92040		
15		[Gov. Code, §11520]	
16	Pharmacy Technician Registration No. TCH 121743		
17		· · ·	
18	Respondent.		
19	······································]	
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21		<u>S OF FACT</u>	
22	1. On or about September 24, 2014, Complainant Virginia K. Herold, in her official		
23	capacity as the Executive Officer of the Board of		
24	filed First Amended Accusation No. 5074 against Sherry Ann Recklau (Respondent) before the		
25	Board of Pharmacy. (First Amended Accusation		
26		ard of Pharmacy (Board) issued Pharmacy	
27		spondent. The Pharmacy Technician Registration	
28	was in full force and effect at all times relevant to		
		1 DEFAULT DECISION AND ORDER	

1	Accusation No. 5074 and expired on February 28, 2014. This lapse in licensure, however		
2	pursuant to Business and Professions Code sections 118(b) and 4300.1, does not deprive the		
3	Board of its authority to institute or continue this disciplinary proceeding.		
4	3. On or about September 29, 2014, Respondent was served by Certified and First Class		
5	Mail copies of the First Amended Accusation No. 5074, Statement to Respondent, Notice of		
6	Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,		
7	11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and		
8	Professions Code section 4100, is required to be reported and maintained with the Board.		
9	Respondent's address of record was and is:		
10	12088 Short Street Lakeside, CA 92040.		
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12	4. Service of the First Amended Accusation was effective as a matter of law under the		
13	provisions of Government Code section 11505, subdivision (c) and/or Business & Professions		
14	Code section 124.		
15	5. The aforementioned documents were not returned by the U.S. Postal Service. On or		
16	about October 6, 2014, Respondent signed the return receipt for the documents transmitted via		
17	certified mail.		
18	6. Government Code section 11506 states, in pertinent part:		
19	(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts		
20	of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion		
21	may nevertheless grant a hearing.		
22	7. Respondent failed to file a Notice of Defense within 15 days after service upon her of		
23	the First Amended Accusation, and therefore waived her right to a hearing on the merits of First		
24	Amended Accusation No. 5074.		
25	8. California Government Code section 11520 states, in pertinent part:		
26	(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions		
27	or upon other evidence and affidavits may be used as evidence without any notice to respondent.		
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	DEFAULT DECISION AND ORDER		

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 3 taking official notice of all the investigatory reports, exhibits and statements contained therein on 4 file at the Board's offices regarding the allegations contained in First Amended Accusation No. 5074, finds that the charges and allegations in First Amended Accusation No. 5074, are separately 6 and severally, found to be true and correct by clear and convincing evidence. 7

10. Taking official notice of its own internal records, pursuant to Business and 8 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation 9 and Enforcement is \$3,435.00 as of October 23, 2014. 10

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Sherry Ann Recklau has subjected her Pharmacy Technician Registration No. TCH 121743 to discipline.

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The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician 15 16 Registration based upon the following violations alleged in the First Amended Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case: 17

Respondent is subject to disciplinary action under Code section 4301(j) for violating 18 a. 19 statutes regulating controlled substances and dangerous drugs, including Health & Safety Code sections 11364.1(a) and 11377(a), in that she used and possessed a controlled substance, namely 20 methamphetamine and possessed drug paraphernalia. 21

b, Respondent is subject to disciplinary action under Code section 4301(g) for 22 knowingly signing a document that falsely represented the existence of facts, in that she failed to 23 disclose in her pharmacy technician application that she had been convicted in a criminal 24 proceeding entitled The People of the State of California vs. Sherry Ann Recklau, San Diego 25 County Superior Court, Case Number C296563. 26

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1	c. Respondent is subject to disciplinary action under Code sections 490 and 4301(1), in		
2	that she was convicted of a crime that is substantially related to the qualifications, duties, and		
3	functions of a pharmacy technician.		
4	d. Respondent is subject to disciplinary action under Code section 4301 for		
5	unprofessional conduct in that she engaged in the activities described above.		
6	ORDER		
7	IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 121743, heretofore		
8	issued to Respondent Sherry Ann Recklau, is revoked.		
9	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a		
10	written motion requesting that the Decision be vacated and stating the grounds relied on within		
11	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
12	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.		
13	This decision shall become effective on December 22, 2014.		
14	It is so ORDERED on November 21, 2014.		
15	BOARD OF PHARMACY		
16	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
17	ρ i		
18	la C. Wussi		
19	By		
20	Board President		
21			
22	70969684.DOC		
23	DOJ Matter ID:SD2014706606		
24	Attachment: Exhibit A: First Amended Accusation		
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	4 DEFAULT DECISION AND ORDER		

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Exhibit A

1 2 3 4 5 6 7 8 9	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Supervising Deputy Attorney General DESIREE I. KELLOGG Deputy Attorney General State Bar No. 126461 110 West "A" Street, Suite 1100 San Diego, CA 92101 P.O. Box 85266 San Diego, CA 92186-5266 Telephone: (619) 645-2105 Facsimile: (619) 645-2061 Attorneys for Complainant BEFORE THE		
10	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11		ATT ATT A	
12	In the Matter of the Accusation Against:	Case No. 5074	
13 14	SHERRY ANN RECKLAU 12088 Short Street Lakeside, CA 92040	FIRST AMENDED ACCUSATION	
15	Pharmacy Technician Registration No. TCH 121743		
16	Respondent.		
17			
18	Complainant alleges:		
19	PARTIES		
20	1. Virginia Herold (Complainant) brings this	First Amended Accusation solely in	
21	her official capacity as the Executive Officer of the Boar	d of Pharmacy, Department of	
22	Consumer Affairs.		
23	2. On October 3, 2012, the Board of Pharma	cy issued Pharmacy Technician	
24	Registration Number TCH 121743 to Sherry Ann Reckla	u (Respondent). The Pharmacy	
25	Technician Registration expired on February 28, 2014 an	id was cancelled on June 1, 2014.	
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1	1	First Amended Accusation	

1	JURISDICTION		
2	3. This First Amended Accusation is brought before the Board of Pharmacy (Board),		
3	Department of Consumer Affairs, under the authority of the following laws. All section		
4	references are to the Business and Professions Code unless otherwise indicated.		
5	4. Section 4300, subdivision (a), of the Code provides that every license issued by the		
6	Board may be suspended or revoked.		
7	5. Section 4300.1 of the Code states:		
8 9 10 11	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.		
12	STATUTORY PROVISIONS		
12	6. Section 482 of the Code states:		
13	Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:		
15	(a) Considering the denial of a license by the board under Section 480; or		
16	(b) Considering suspension or revocation of a license under Section 490.		
17	Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.		
18	7. Section 490 of the Code provides, in pertinent part, that a board may suspend or		
19	revoke a license on the ground that the licensee has been convicted of a crime substantially		
20	related to the qualifications, functions, or duties of the business or profession for which the		
21	license was issued.		
22	8. Section 493 of the Code states:		
23	Notwithstanding any other provision of law, in a proceeding conducted by a		
24	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		
25	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		
26	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		
27	may inquire into the circumstances surrounding the commission of the crime in order		
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	First Amended Accusation		

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.

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

9. Section 4301 of the Code states:

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

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

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

(1) The conviction of a crime substantially related to the qualifications, functions, 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 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 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 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 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 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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Health & Safety Code section 11364.1 (a) states:

It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

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11. Health & Safety Code section 11377 (a) states:

Except as authorized by law and otherwise provided in subdivision (b) or section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (3), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or pursuant to subdivision (h) of Section 1170 of the Penal Code, **REGULATORY PROVISIONS** California Code of Regulations, title 16, section 1769, states: 12. (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. 13. 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. COST RECOVERY 14. 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 4

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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15. <u>Methamphetamine</u> is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d).

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FACTUAL ALLEGATIONS

16. On December 22, 2009, in a criminal proceeding entitled *The People of the State* of California vs. Sherry Ann Recklau, in San Diego County Superior Court, Case Number C296563, Respondent was convicted on her plea of guilty of violating VC 14601.2(b), knowingly operating a motor vehicle when her driving privilege was restricted for a prior DUI conviction, a misdemeanor. As a result of the conviction, on December 22, 2009, Respondent was placed on three years probation. Additionally, she was ordered to serve ten days in jail and to perform volunteer work.

17. On or about January 20, 2012, Respondent submitted an application for a 16 pharmacy technician registration. She certified under penalty of perjury under the laws of the 17 State of California to the truth and accuracy of all statements, answers and representations made in 18 her application, including all supplementary statements. She also certified that she had read the 19 instructions attached to the application. Question number 7 required Respondent to disclose all 20 21 convictions. Question number 7 further stated that the "failure to disclose a disciplinary action or 22 conviction may result in the license being denied or revoked for falsifying the application." In response to question 7, Respondent did not disclose the criminal conviction described in 23 paragraph 14 above. 24

18. On or about September 2, 2013, the El Cajon Police Department initiated a traffic
stop of Respondent's vehicle in El Cajon, California. Respondent was driving on a suspended
license and was transporting three adult probationers and her two year old son who was not
restrained by a seat belt nor in a child safety seat. The officers searched Respondent's vehicle

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and found a plastic baggie containing a white crystal like substance, on the driving board where Respondent's feet had been in the vehicle and next to her purse, and a glass pipe with white residue and burn marks on the bulbous end, inside her purse. The white crystalline substance tested presumptive positive for amphetamines and had a net weight of 7.71 grams and a gross weight of 8.12 grams. Respondent admitted that she possessed drug paraphernalia and knew about the existence of methamphetamine in her vehicle. Respondent also admitted to using methamphetamine on September 1, 2013.

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FIRST CAUSE FOR DISCIPLINE

(Violations of Drug Laws)

19. Respondent is subject to disciplinary action under Code section 4301(j) for violating statutes regulating controlled substances and dangerous drugs, including Health & Safety Code sections 11364.1(a) and 11377(a), in that she used and possessed a controlled substance, namely methamphetamine and possessed drug paraphernalia, as set forth in paragraph 18 above, which is incorporated herein by reference.

SECOND CAUSE FOR DISCIPLINE

(Knowingly Signing a Document That Falsely Represents the Existence of Facts)

17 20. Respondent is subject to disciplinary action under Code section 4301(g) for
18 knowingly signing a document that falsely represented the existence of facts, in that she failed to
19 disclose in her pharmacy technician application that she had been convicted in a criminal
20 proceeding entitled *The People of the State of California vs. Sherry Ann Recklau*, San Diego
21 County Superior Court, Case Number C296563, as set forth in paragraphs 16-17 above, which is
22 incorporated herein by reference.

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THIRD CAUSE FOR DISCIPLINE

(December 22, 2009 Criminal Conviction for Driving on Suspended License)

25 21. Respondent is subject to disciplinary action under Code sections 490 and 4301(l), in
26 that she was convicted of a crime that is substantially related to the qualifications, duties, and
27 functions of a pharmacy technician as described in paragraph 16 above, which is incorporated
28 herein by reference.

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FOURTH CAUSE FOR DISCIPLINE

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(Unprofessional Conduct)

22. Respondent is subject to disciplinary action under Code section 4301 for unprofessional conduct in that she engaged in the activities described in paragraphs 16-18 above, which is incorporated herein by reference.

DISCIPLINARY CONSIDERATIONS

23. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges:

a. On June 25, 2008, in a criminal proceeding entitled *The People of the State of California vs. Sherry Ann Recklau*, in San Diego County Superior Court, East County Regional Center, East County Division Case Number C280615, Respondent was convicted on her plea of guilty to violating VC section 23152 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. A misdemeanor charge for violation of VC section 23152, subdivision (a), DUI, with a similar enhancement was dismissed pursuant to a plea bargain.

b: On December 9, 2008, in a criminal proceeding entitled *The People of the* 18 State of California vs. Sherry Ann Recklau, in San Diego County Superior Court, East County 19 20 Regional Center, East County Division Case Number C285761, Respondent was convicted on 21 her plea of guilty to violating VC section 23152 subdivision (b), driving with a BAC of 0.08 22 percent or more, a misdemeanor. Respondent admitted and the court found true the allegation that pursuant to VC section 23540, within ten years of violating VC section 23152, subdivision 23 (b), on May 10, 2008, she committed a separate violation of VC section 23152, subdivision (b), a 24 misdemeanor resulting in a conviction on June 25, 2008, in case number C280615. Misdemeanor 25 charges for violation of VC sections 14601.2, subdivision (a), driving when privilege is 26 suspended for a prior DUI conviction, and 23152, subdivision (a), DUI, with a similar 27 enhancement, were dismissed pursuant to a plea bargain. 28

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1	PRAYER		
2	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
3	alleged, and t	lleged, and that following the hearing, the Board of Pharmacy issue a decision:	
4	1.	Revoking or suspending Pharmacy Technician Registration Number TCH	
5	121743, issue	ssued to Sherry Ann Recklau;	
.6	2.	Ordering Sherry Ann Recklau to pay the Board of Pharmacy the reasonable costs	
7	of the investig	of the investigation and enforcement of this case, pursuant to Business and Professions Code	
8	section 125.3; and		
9	3.	Taking such other and further action as deemed necessary and proper.	
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Į1	DATED:	9/24/14 Ungina Hedd	
12		VIRGINIA HEROLD Executive Officer	
13		Board of Pharmacy Department of Consumer Affairs	
14		i State of California Complainant	
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