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

11 In the Matter of the First Amended Accusation
12 Against:

Case No. 5128

13 **MANUEL BARAJAS, JR.**
14 7850 Raviller Dr.
14 Downey, CA 90240

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Pharmacy Technician Registration
16 No. TCH 61269

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about February 18, 2015, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed First Amended Accusation No. 5128 against Manuel Barajas, Jr. (Respondent) before the
22 Board of Pharmacy. (First Amended Accusation attached as Exhibit A.)

23 2. On or about May 3, 2014, Complainant filed Accusation No. 5128 against
24 Respondent. (Accusation attached as Exhibit B.)

25 3. On or about March 7, 2005, the Board of Pharmacy (Board) issued Pharmacy
26 Technician Registration No. TCH 61269 to Respondent. The Pharmacy Technician Registration
27 was in full force and effect at all times relevant to the charges brought in Accusation No. 5128
28 and will expire on May 31, 2016, unless renewed

1 4. On or about February 18, 2015, Respondent was served by Certified and First Class
2 Mail copies of the First Amended Accusation No. 5128, Supplemental Statement to Respondent,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
4 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions
5 Code section 4100, is required to be reported and maintained with the Board. Respondent's
6 address of record was and is: 7850 Raviller Dr., Downey, CA 90240.

7 5. On or about May 30, 2014, Respondent was served by Certified and First Class Mail
8 copies of the Accusation No. 5128, Statement to Respondent, Notice of Defense, Request for
9 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
10 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
11 is required to be reported and maintained with the Board. Respondent's address of record was
12 and is: 7850 Raviller Dr., Downey, CA 90240.

13 6. Service of the First Amended Accusation and Accusation was effective as a matter of
14 law under the provisions of Government Code section 11505, subdivision (c) and/or Business &
15 Professions Code section 124.

16 7. On or about June 12, 2014, Respondent signed and returned a Notice of Defense,
17 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
18 address of record and it informed him that an administrative hearing in this matter was scheduled
19 for March 2, 2015. Respondent failed to appear at that hearing.

20 8. Government Code section 11506 states, in pertinent part:

21 (c) The respondent shall be entitled to a hearing on the merits if the respondent
22 files a notice of defense, and the notice shall be deemed a specific denial of all parts
23 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
may nevertheless grant a hearing.

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

25 (a) If the respondent either fails to file a notice of defense or to appear at the
26 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
28 respondent.

10. 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 file at the Board's offices regarding the allegations contained in First Amended Accusation No. 5128 and Accusation No. 5128, finds that the charges and allegations in First Amended Accusation No. 5128 and Accusation No. 5128, are separately and severally, found to be true and correct by clear and convincing evidence.

11. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$4,507.50 as of February 27, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Manuel Barajas, Jr. has subjected his Pharmacy Technician Registration No. TCH 61269 to discipline.

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

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

(a) Business and Professions Code section 4060 and 4301, subdivision (j), in that on or about September 6, 2013, Respondent was found to be in possession of methamphetamine. Respondent was subsequently arrested and charged with violating Health and Safety Code section 11377(a) [possession of a controlled substance] in a criminal proceeding entitled *The People of the State of California v. Manuel Barajas* (Super. Ct. L.A. County, No. 3DY05180).

(b) Business and Professions Code section 4301, subdivisions (j) and (l), in that on or about October 29, 2014, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight of

1 alcohol, in his blood] in a criminal proceeding entitled *The People of the State of California v.*
2 *Manual Barajas, Jr.* (Super. Ct. Los Angeles County, No. 4DY06010).

3 (c) Business and Professions Code section 4301, subdivisions (h) and (j), in that
4 Respondent used alcohol in a manner dangerous to himself and/or the public.

5 **ORDER**

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 61269, heretofore
7 issued to Respondent Manuel Barajas, Jr., is revoked.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on October 30, 2015.

13 It is so ORDERED September 30, 2015.

14 BOARD OF PHARMACY
15 DEPARTMENT OF CONSUMER AFFAIRS
16 STATE OF CALIFORNIA

17 

18
19 By _____

20 Amy Gutierrez, Pharm.D.
21 Board President

22 51720433.DOC
23 DOJ Matter ID:LA2014511239
24 Jz

25 Attachment:
26 Exhibit A: First Amended Accusation
27 Exhibit B: Accusation
28

Exhibit A

First Amended Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC GREENBAUM
Supervising Deputy Attorney General
3 THOMAS L. RINALDI
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2541
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

11 In the Matter of the First Amended Accusation Against: Case No. 5128

12 **MANUEL BARAJAS, JR.**
7850 Raviller Dr.
13 Downey, CA 90240

14 Pharmacy Technician Registration No. TCH 61269

15 Respondent.

**FIRST AMENDED
ACCUSATION**

16 Complainant alleges:

17 **PARTIES**

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

21 2. On or about March 7, 2005, the Board issued Pharmacy Technician Registration
22 No. TCH 61269 to Manuel Barajas, Jr. (Respondent). The Pharmacy Technician Registration was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 May 31, 2014, unless renewed.

25 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 490 provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

6. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

7. Section 4060 states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,

1 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
2 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
3 labeled with the name and address of the supplier or producer.

4 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician
5 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
6 devices."

7 8. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
8 revoked."

9 9. Section 4301 states, in pertinent part:

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

13

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

19

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The

1 board may inquire into the circumstances surrounding the commission of the crime, in order to fix
2 the degree of discipline or, in the case of a conviction not involving controlled substances or
3 dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a
5 conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of
6 this provision. The board may take action when the time for appeal has elapsed, or the judgment of
7 conviction has been affirmed on appeal or when an order granting probation is made suspending
8 the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
9 Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
10 setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

11
12 **REGULATORY PROVISION**

13 10. California Code of Regulations, title 16, section 1770, states:

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

20 **COST RECOVERY**

21 11. Section 125.3 that the Board may request the administrative law judge to direct a
22 licensee found to have committed a violation or violations of the licensing act to pay a sum not to
23 exceed the reasonable costs of the investigation and enforcement of the case.

24 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

25 12. Methamphetamine is a Schedule II controlled substance as designated by Health and
26 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
27 section 4022.
28

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Possession of a Controlled Substance - Methamphetamine)**

3 13. Respondent is subject to disciplinary action under sections 4060 and 4301, subdivision
4 (j), in that on or about September 6, 2013, Respondent was found to be in possession of
5 methamphetamine. The circumstances are that on that day, Los Angeles County Sheriff's
6 Deputies encountered Respondent asleep in his vehicle with the driver's side door open while in
7 the parking lot of the "Good Night Inn" motel. Located on the dash board of the vehicle was a
8 baggie of methamphetamine that Respondent advised had been given to him for his personal use
9 and which he consumes through the use of a straw. Respondent was subsequently arrested and
10 charged with violating Health and Safety Code section 11377(a) [possession of a controlled
11 substance], in a criminal proceeding entitled *The People of the State of California v. Manuel*
12 *Barajas* (Super. Ct. L.A. County, Case No. 3DY05180). Respondent pled guilty and was placed
13 in a deferred entry of judgment program for 18 months.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Conviction of Crime)**

16 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
17 (l), in that on or about October 29, 2014, Respondent was convicted of one misdemeanor count of
18 violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by
19 weight of alcohol in his blood] in a criminal proceeding entitled *The People of the State of*
20 *California v. Manuel Barajas, Jr.* (Super. Ct. Los Angeles County, Case No. 4 DY06010). The
21 circumstances underlying the conviction are that on or about June 29, 2014, Respondent drove a
22 motor vehicle with a blood alcohol level of .37%. As a result of the conviction, the Court placed
23 Respondent on probation for three years subject to certain terms and conditions.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Dangerous Use of Alcohol)**

26 15. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
27 (j), in that Respondent used alcohol in a manner dangerous to himself and/or the public as further
28 described in paragraph no. 14.

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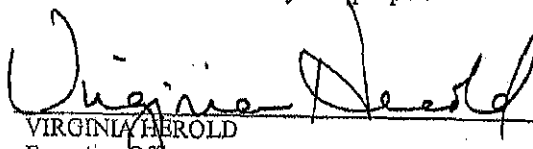
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 61269, issued to Manuel Barajas, Jr.;
2. Ordering Manuel Barajas, Jr. to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

2/18/15



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

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Exhibit B

Accusation

1 KAMALA D. HARRIS
2 Attorney General of California
3 GREGORY J. SALUTE
4 Supervising Deputy Attorney General
5 THOMAS L. RINALDI
6 Deputy Attorney General
7 State Bar No. 206911
8 300 So. Spring Street, Suite 1702
9 Los Angeles, CA 90013
10 Telephone: (213) 897-2541
11 Facsimile: (213) 897-2804
12 *Attorneys for Complainant*

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ACCUSATION

21 Pharmacy Technician Registration No. TCH 61269

22 Respondent.

23 Complainant alleges:

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26 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).

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28 No. TCH 61269 to Manuel Barajas, Jr. (Respondent). The Pharmacy Technician Registration was
in full force and effect at all times relevant to the charges brought herein and will expire on
May 31, 2014, unless renewed.

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laws. All section references are to the Business and Professions Code unless otherwise indicated.

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2 action during the period within which the license may be renewed, restored, reissued or reinstated.

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6 6. Section 492 states:

7 "Notwithstanding any other provision of law, successful completion of any diversion
8 program under the Penal Code, or successful completion of an alcohol and drug problem
9 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
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12 "(j) The violation of any of the statutes of this state, or any other state, or of the United
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2 **CAUSE FOR DISCIPLINE**

3 **(Possession of a Controlled Substance - Methamphetamine)**

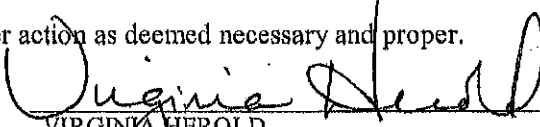
4 13. Respondent is subject to disciplinary action under sections 4060 and 4301, subdivision
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7 Deputies encountered Respondent asleep in his vehicle with the driver's side door open while in
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13 *Barajas* (Super. Ct. L.A. County, Case No. 3DY05180). Respondent pled guilty and was placed
14 in a deferred entry of judgment program for 18 months.

15 **PRAYER**

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

- 18 1. Revoking or suspending Pharmacy Technician Registration No. TCH 61269, issued to
19 Manuel Barajas, Jr.;
- 20 2. Ordering Manuel Barajas, Jr. to pay the Board the reasonable costs of the
21 investigation and enforcement of this case, pursuant to section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 5/3/14


24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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