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

In the Matter of the Accusation Against:  
**DOMINIQUE JOEL DIMARCO**  
**22650 Bay Avenue**  
**Moreno Valley, CA 92553**  
**Pharmacy Technician Registration No. TCH**  
**47136**  
  
Respondent.

Case No. 5217  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On September 13, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5217 against Dominique Joel Dimarco (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On August 25, 2003, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 47136 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5217 and will expire on November 30, 2014, unless renewed.
3. On September 24, 2014, Respondent was served by Certified and First Class Mail copies of Accusation No. 5217, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)

1 at Respondent's address of record which, pursuant to Business and Professions Code section  
2 4100, is required to be reported and maintained with the Board. Respondent's address of record  
3 was and is 22650 Bay Avenue, Moreno Valley, CA 92553.

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

6 5. On September 30, 2014, the domestic return receipt for the aforementioned  
7 documents was returned by the U.S. Postal Service indicating receipt on September 26, 2014.

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon  
15 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
16 No. 5217.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
26 file at the Board's offices regarding the allegations contained in Accusation No. 5217, finds that  
27 the charges and allegations in Accusation No. 5217, are separately and severally, found to be true  
28 and correct by clear and convincing evidence.

10 Taking official notice of its own internal records, pursuant to Business and  
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for  
12 Investigation and Enforcement is \$1,443.30 as of October 30, 2014.

DETERMINATION OF ISSUES

1  
2           1.       Based on the foregoing findings of fact, Respondent Dominique Joel Dimarco has  
3 subjected his Pharmacy Technician Registration No. TCH 47136 to discipline.

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

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

8           a.       Respondent has subjected his pharmacy technician registration to  
9 discipline under Code sections 490 and 4301, subdivision (l), in that on March 17, 2014, in a  
10 criminal proceeding entitled *The People of the State of California v. Dominique Joel Dimarco,*  
11 *aka Dominique J. Di Marco, aka Dominique Joel Marco,* in the Riverside County Superior Court,  
12 Riverside Hall of Justice, Case Number RIM1402592, Respondent was convicted on his plea of  
13 guilty to violating Vehicle Code (VC) sections 23152, subdivisions (a), driving while under the  
14 influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC) of 0.08  
15 percent or more, misdemeanors substantially related to the qualifications, functions, and duties of  
16 a registered pharmacy technician. Respondent admitted and the court found true the allegation  
17 that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant to VC  
18 section 23578. Respondent was also convicted on his plea of guilty to violating VC section  
19 23154, subdivision (a), driving with a BAC of 0.01 percent or more while on probation for a  
20 violation of VC section 23152, an infraction.

21           b.       Respondent has subjected his pharmacy technician registration to  
22 discipline under Code section 4301, subdivision (h) in that on January 10, 2014, he used alcohol  
23 to the extent and in a manner that was dangerous and injurious to himself and to the public.

24           c.       Respondent has subjected his pharmacy technician registration to  
25 discipline under Code section 4301, subdivision (k) in that on March 17, 2014, he was convicted  
26 of more than one misdemeanor involving the use or consumption of alcohol.

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**ORDER**

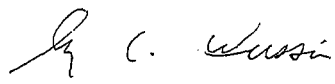
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 47136, heretofore issued to Respondent Dominique Joel Dimarco, is revoked.

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 December 26, 2014.

It is so ORDERED on November 26, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



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

70974398.DOC  
DOJ Matter ID:SD2014707382

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Acting Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2105  
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. 5217

13 **DOMINIQUE JOEL DIMARCO**  
22650 Bay Avenue  
14 Moreno Valley, CA 92553

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

15 **Pharmacy Technician Registration No. TCH 47136**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On August 25, 2003, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 47136 to Dominique Joel Dimarco (Respondent). Respondent has  
24 also been known as Dominique Joel Marco and Dominique J. Di Marco. The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on November 30, 2014, unless renewed.

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**JURISDICTION**

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

4. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

5. Section 4300.1 of the Code states:

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.

**STATUTORY PROVISIONS**

6. Section 482 of the Code states:

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

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

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

7. Section 4301 of the Code states:

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:

....

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

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9. 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**

10. 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 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.

**FIRST CAUSE FOR DISCIPLINE**

**(March 17, 2014 Criminal Conviction for DUI on January 10, 2014)**

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

a. On March 17, 2014, in a criminal proceeding entitled *The People of the State of California v. Dominique Joel Dimarco, aka Dominique J. Di Marco, aka Dominique Joel Marco*, in the Riverside County Superior Court, Riverside Hall of Justice, Case Number RIM1402592, Respondent was convicted on his plea of guilty to violating Vehicle Code (VC) sections 23152, subdivisions (a), driving while under the influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, misdemeanors, and 23154, subdivision (a), driving with a BAC of 0.01 percent or more while on probation for a violation of VC section 23152, an infraction. Respondent admitted and the court found true the

///



1 allegation that Respondent's BAC was .15 percent or more, a sentencing enhancement pursuant  
2 to VC section 23578.

3           b.       As a result of the convictions, on April 14, 2014, Respondent was  
4 sentenced to be committed to the custody of the Riverside County Sheriff for 30 days, to be  
5 served under the work release program. Respondent was granted 48 months summary probation  
6 under standard alcohol conditions and ordered to pay fines, restitution, and penalty assessments.  
7 Respondent was also ordered to attend and satisfactorily complete an Offender Drinking Driver  
8 Program for 18 months. On August 7, 2014, Respondent was found in violation of probation  
9 term number 3 in this case and term number 12 in Case Number RIM1210080, detailed in  
10 paragraph 16, below. As a result of the violations, Respondent's probation was revoked.

11           c.       The facts that led to the conviction are that on January 10, 2014,  
12 Respondent sideswiped another vehicle while driving westbound on state route 60, east of  
13 Rubidoux Boulevard in Jurupa Valley, California. Respondent continued driving at over 100  
14 miles per hour, passed a California Highway Patrol (CHP) vehicle. The officer driving the CHP  
15 vehicle conducted an enforcement stop. During the interview, the officer noticed Respondent's  
16 slow and clumsy movements, thick and slurred speech, disheveled clothing, and smell of alcohol.  
17 Respondent admitted to taking large doses of Robitussin and Nyquil. Respondent failed the  
18 series of field sobriety tests and was transported to the CHP area office in Riverside, where he  
19 consented to a blood draw. Respondent's subsequent chemical test results indicated a BAC of .19  
20 percent.

21   **SECOND CAUSE FOR DISCIPLINE**

22   **(Unprofessional Conduct - Dangerous Use of Alcohol)**

23           12.       Respondent has subjected his pharmacy technician registration to discipline under  
24 Code section 4301, subdivision (h) in that on January 10, 2014, he used alcohol to the extent and  
25 in a manner that was dangerous and injurious to himself and to the public, as described in the  
26 cause above, which are incorporated by reference.

27       ///

28       ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Alcohol Related Felony)

3 13. Respondent has subjected his pharmacy technician registration to discipline under  
4 Code section 4301, subdivision (k) in that on March 17, 2014, he was convicted of more than  
5 one misdemeanor involving the use or consumption of alcohol.

6 DISCIPLINARY CONSIDERATIONS

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

9 15. In July 2001, in a prior criminal proceeding entitled *The People of the State of*  
10 *California v. Dominique Joel Dimarco*, in the Los Angeles County Superior Court, Pomona  
11 Courthouse South, Respondent was convicted on his plea of *nolo contendere* to violating Penal  
12 Code section 488, petty theft, a misdemeanor. As a result of the conviction, Respondent served  
13 two days in the Los Angeles County Jail and paid a fine of \$100.00. The facts that led to the  
14 conviction are that Respondent walked out without paying a pair of pants from the Robinsons-  
15 May store inside Puente Hills Mall in Industry, California.

16 16. On August 10, 2012, in a prior criminal proceeding entitled *The People of the*  
17 *State of California v. Dominique Joel Dimarco, aka Dominique J. Di Marco, aka Dominique Joel*  
18 *Marco*, in the Riverside County Superior Court, Riverside Hall of Justice, Case Number  
19 RIM1210080, Respondent was convicted on his plea of guilty to violating VC section 23152,  
20 subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a  
21 misdemeanor. Respondent admitted and the court found true the allegation that Respondent's  
22 BAC was .15 percent or more, a sentencing enhancement pursuant to VC section 23578. A  
23 misdemeanor charge for violation of VC section 23152, subdivision (a), DUI, was dismissed  
24 pursuant to a plea bargain. As a result of the conviction, on August 10, 2012, Respondent was  
25 sentenced to be committed to the custody of the Riverside County Sheriff for 20 days, with the  
26 remaining 19 days to be served under the Sheriff's Labor Program. Respondent was granted 36  
27 months summary probation under standard alcohol conditions and ordered to pay fines, fees, and  
28 penalty assessments. Respondent was also ordered to attend and satisfactorily complete a First

1 Offender DUI Program for nine months and the Mothers Against Drunk Driving Victim Impact  
2 Panel session.

3 17. As a result of Respondent's conviction, detailed in paragraph 16, above, on  
4 January 31, 2013, the Board issued Respondent Citation Number CI 2011 52238, ordering him to  
5 pay a fine assessed at \$3,500.00. The citation included the following charges:

6 a. Respondent violated Code section 4301, subdivision (h), for unprofessional  
7 conduct, administering to oneself, of any controlled substance, or the use of any dangerous drug  
8 or of alcoholic beverages.

9 b. Respondent violated Code section 4301, subdivision (l), for unprofessional  
10 conduct, conviction of a crime substantially related to the practice of pharmacy.

11 **PRAYER**

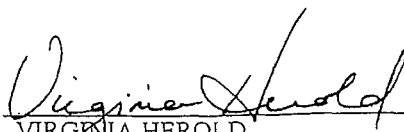
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
13 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 47136,  
15 issued to Dominique Joel Dimarco;

16 2. Ordering Dominique Joel Dimarco to pay the Board of Pharmacy the reasonable  
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
18 Code section 125.3;

19 3. Taking such other and further action as deemed necessary and proper.  
20  
21

22  
23 DATED: 9/13/14

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

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