

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

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

In the Matter of the Accusation Against:

**MARK ALAN MARTINEZ
16207 Sitting Bull Street
Victorville, CA 92395**

**Pharmacy Technician Registration No. TCH
29329**

Respondent.

Case No. 5228

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 25, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5228 against Mark Alan Martinez ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 13, 1999, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 29329 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5228, expired on January 31, 2015, and has not renewed. Pursuant to Business and Professions Code

1 section 4300.1, this lapse in licensure does not deprive the Board of its authority to institute or
2 continue this disciplinary proceeding.

3 3. On or about March 4, 2015, Respondent was served by Certified and First Class Mail
4 with copies of the Accusation No. 5228, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is: 16207 Sitting Bull Street, Victorville, CA 92395.

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 and Professions Code section
11 124.

12 5. The aforementioned documents in Paragraph 3 were not returned by the U.S. Postal
13 Service.

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
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 5228.

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

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 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. 5228, finds that
2 the charges and allegations in Accusation No. 5228, 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 \$1,875.00 as of April 7, 2015.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Mark Alan Martinez has
9 subjected his Pharmacy Technician Registration No. TCH 29329 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 section 4301, subdivision (l), and Code section 490,
15 in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
16 unprofessional conduct in that Respondent was convicted of crimes substantially related to the
17 qualifications, functions, and duties of a pharmacy technician, in that:

18 i. On or about May 5, 2014, Respondent was convicted of one misdemeanor
19 count of violating Vehicle Code section 23153, subdivision (b) [driving with a blood alcohol level
20 of 0.08% or more, by weight, of alcohol in his blood causing injury] and one misdemeanor count
21 of violating Vehicle Code section 20001, subdivision (a) [leaving the scene of an accident] in the
22 criminal proceeding entitled *The People of State of California v. Mark Alan Martinez* (Super. Ct.
23 L.A. County, 2014, Case No. 3PK02995).

24 ii. On or about October 7, 2009, Respondent was convicted of one misdemeanor
25 count of violating Vehicle Code section 23152, subdivision (b) [driving while having a 0.08% or
26 higher blood alcohol] in the criminal proceeding entitled *The People of the State of California v.*
27 *Mark Alan Martinez* (Super. Ct. L.A. County, 2009, Case No. 9JB08496).

28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 SYDNEY M. MEHRINGER
Deputy Attorney General
4 State Bar No. 245282
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2537
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 5228

13 **MARK ALAN MARTINEZ**
16207 Sitting Bull Street
Victorville, CA 92395

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 29329

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
21 2. On or about May 13, 1999, the Board issued Pharmacy Technician Registration No.
22 TCH 29329 to Mark Alan Martinez ("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 January 31, 2015, unless renewed.

25 **JURISDICTION**

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

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
18 to 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."

28 ///

1 REGULATORY PROVISIONS

2 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:
3 "For the purpose of denial, suspension, or revocation of a personal or facility license
4 pursuant to Division 1.5 (commencing with Section 475), a crime or act shall be considered
5 substantially related to the qualifications, functions or duties of a licensee or registrant if to a
6 substantial degree it evidences present or potential unfitness of a licensee or registrant to perform
7 the functions authorized by his license or registration in a manner consistent with the public
8 health, safety, or welfare."

9 COST RECOVERY

10 9. Section 125.3 provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licentiate found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINE

15 (Conviction of Substantially Related Crimes)

16 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
17 and Code section 490, in conjunction with California Code of Regulations, title 16, section 1770,
18 on the grounds of unprofessional conduct in that Respondent was convicted of crimes
19 substantially related to the qualifications, functions, and duties of a pharmacy technician, as
20 follows:

21 a. On or about May 5, 2014, after pleading *nolo contendere*, Respondent was convicted
22 of one misdemeanor count of violating Vehicle Code section 23153, subdivision (b) [driving with
23 a blood alcohol level of 0.08% or more, by weight, of alcohol in his blood causing injury] and one
24 misdemeanor count of violating Vehicle Code section 20001, subdivision (a) [leaving the scene of
25 an accident] in the criminal proceeding entitled *The People of State of California v. Mark Alan*
26 *Martinez* (Super. Ct. L.A. County, 2014, Case No. 3PK02995). Respondent admitted to special
27 allegations of driving with a blood alcohol level of 0.15% or more, by weight, of alcohol in his
28 blood within the meaning of Vehicle Code section 23578. The court ordered Respondent to serve

1 120 days in Los Angeles County Jail, to enroll in an 18 month second offender alcohol program,
2 and placed him on 4 years probation with terms and conditions.

3 b. The circumstances surrounding the May 5, 2014 conviction are that on or about May
4 18, 2013, Pomona Police Department officers were alerted to a hit and run traffic collision with
5 injuries. An officer responding to the report observed Respondent's vehicle, which had sustained
6 substantial damage, heading away from the scene of the accident at a high rate of speed with its
7 headlights off. The officer conducted a traffic stop and approached Respondent. The officer
8 immediately smelled the odor of an alcoholic beverage emitting from Respondent's breath and
9 person. During questioning, Respondent admitted to consuming a couple of beers. Respondent
10 refused to complete field sobriety tests. The driver of the vehicle that Respondent collided with
11 suffered a laceration and swelling on the upper left side of her head. It was subsequently
12 determined that Respondent's blood-alcohol content was 0.17%.

13 c. On or about October 7, 2009, after pleading guilty, Respondent was convicted of one
14 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
15 having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the*
16 *State of California v. Mark Alan Martinez* (Super. Ct. L.A. County, 2009, Case No. 9JB08496).
17 Respondent admitted to special allegations of driving with a blood alcohol level of 0.15% or
18 more, by weight, of alcohol in his blood within the meaning of Vehicle Code section 23578. The
19 court ordered Respondent to enroll in a 6 month first offender alcohol program and placed him on
20 3-years probation with terms and conditions.

21 d. The circumstances surrounding the October 7, 2009 conviction are that on or about
22 August 8, 2009, a Covina Police Department officer initiated a traffic enforcement stop after
23 observing Respondent making an unsafe lane change. The officer immediately smelled a strong
24 odor of an alcoholic beverage emitting from Respondent. Respondent was observed to have red,
25 watery, bloodshot eyes, and he was slurring his words. Respondent admitted to drinking four 12-
26 ounce cans of Coors Light beer earlier. Respondent submitted to a series of field sobriety tests
27 but was unable to successfully perform them. It was subsequently determined that Respondent's
28 blood-alcohol content was 0.19%.

