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

In the Matter of the Accusation Against:
CASEY M. O'LEARY
14171 Calle Domingo
Victorville, CA 92392

Pharmacy Technician Registration
No. TCH 104680

Respondent.

Case No. 5312
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 22, 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. 5312 against Casey M. O'Leary (Respondent) before the Board of Pharmacy. The Accusation is attached as Exhibit A.

2. On or about July 7, 2010, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 104680 to Casey M. O'Leary ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2015.

1 3. On October 28, 2015, copies of Accusation No. 5312, Statement to Respondent,
2 Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections
3 11507.5, 11507.6, and 11507.7) were sent to Respondent's address of record by Certified and
4 First Class Mail. Pursuant to Business and Professions Code section 136, Respondent is required
5 to report and maintain his address of record with the Board. Respondent's address of record was
6 and is 14171 Calle Domingo, Victorville, CA 92392.

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

9 5. Government Code section 11506 states, in pertinent part:

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

15 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
17 5312.

18 7. 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 8. 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. 5312, finds that
28 the charges and allegations in Accusation No. 5312, are separately and severally, found to be true
and correct by clear and convincing evidence.

 9. Taking official notice of its own internal records and Exhibit 3 of the Default
Decision Investigatory Evidence Packet, pursuant to Business and Professions Code section

1 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are
2 \$2,047.50.

3 **DETERMINATION OF ISSUES**

4 1. Based on the foregoing findings of fact, Respondent Casey O'Leary has subjected his
5 Pharmacy Technician License No. TCH 104680 to discipline.

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

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

10 a. Violation of Code section 4301 (l), in conjunction with California Code of
11 Regulations, title 16, section 1770, on the grounds of unprofessional conduct in that Respondent
12 was convicted of crimes substantially related to the qualifications, functions, and duties of a
13 registered pharmacy technician;

14 b. Violation of Code section 4301, subdivision (h), in that Respondent used alcoholic
15 beverages to an extent or in a manner dangerous or injurious to himself, another person, or the
16 public;

17 c. Violation of Code section 4301, subdivision (k), on the grounds of unprofessional
18 conduct, in that Respondent sustained more than one misdemeanor conviction involving the
19 consumption of alcohol;

20 d. Violation of Code section 4301, subdivision (g), on the grounds of unprofessional
21 conduct, in that Respondent knowingly made a false statement of fact when he failed to disclose
22 his June 21, 2012 conviction for driving under the influence of alcohol on his licensure renewal
23 application.

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ORDER

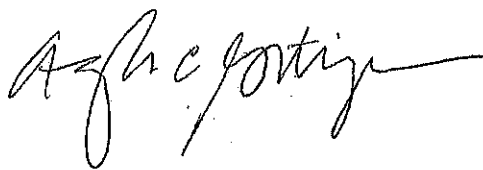
IT IS SO ORDERED that Pharmacy Technician License No. TCH 104680, heretofore issued to Respondent Casey M. O'Leary is revoked.

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 at 5:00 p.m. on April 28, 2016.

It is so ORDERED on March 29, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 THOMAS L. RINALDI
Supervising Deputy Attorney General
3 KRITHHIKA VASUDEVAN
Deputy Attorney General
4 State Bar No. 247590
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2540
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**

11 In the Matter of the Accusation Against:

Case No. 5312

12 **CASEY M. O'LEARY**
14171 Calle Domingo
13 Victorville, CA 92392

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 104680

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 7, 2010, the Board of Pharmacy ("Board") issued Pharmacy
23 Technician Registration No. TCH 104680 to Casey M. O'Leary ("Respondent"). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on October 31, 2015, unless renewed.

26 **JURISDICTION**

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

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

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

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

23 **COST RECOVERY**

24 8. Section 125.3 provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
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1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of Substantially Related Crime)**

5 9. Respondent is subject to disciplinary action under Code section 4301, subdivision (1),
6 in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
7 unprofessional conduct, in that Respondent was convicted of crimes substantially related to the
8 qualifications, functions, and duties of a registered pharmacy technician, as follows:

9 a. On or about May 15, 2014, after pleading nolo contendere, Respondent was convicted
10 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
11 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding
12 entitled *The People of the State of California v. Casey Michael OLeary* (Super. Ct. San
13 Bernardino County, 2014, No. TV11400086.) The Court sentenced Respondent to serve 20 days
14 in San Bernardino County Jail, ordered him to attend a multiple offender DUI program, ordered
15 him to attend 36 AA/NA meetings, and placed him on 36 months probation, with terms and
16 conditions.

17 b. The circumstances surrounding the conviction are that on or about November 16,
18 2013, Respondent was involved in a traffic collision where he rear-ended another vehicle. When
19 a California Highway Patrol officer spoke to Respondent, he could smell the odor of an alcoholic
20 beverage emitting from Respondent's breath and noticed that his eyes were red and watery. When
21 asked how much he had to drink, Respondent stated he had four Samuel Adams beers.

22 Respondent was unable to perform several field sobriety tests. Respondent submitted to a
23 preliminary alcohol screening that resulted in a blood-alcohol content level of 0.239%. Later,
24 Respondent submitted to a breath test that resulted in a breath-alcohol content level of 0.21%.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Conviction of Substantially Related Crime)**

27 10. Respondent is subject to disciplinary action under Code section 4301, subdivision (1),
28 in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of

1 unprofessional conduct, in that Respondent was convicted of crimes substantially related to the
2 qualifications, functions, and duties of a registered pharmacy technician, as follows:

3 a. On or about June 21, 2012, after pleading guilty, Respondent was convicted of one
4 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while
5 having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The*
6 *People of the State of California v. Michael Casey OLeary* (Super. Ct. San Bernardino County,
7 2012, No. TVI1200968.) The Court sentenced Respondent to serve 5 days in San Bernardino
8 County Jail, ordered him to attend a 9 month first offender alcohol program, and placed
9 Respondent on probation for 36 months, with terms and conditions.

10 b. The circumstances surrounding the conviction are that on or about March 2, 2012,
11 Respondent was found slumped over behind the wheel of his vehicle in the middle of a street.
12 The vehicle was in drive and Respondent's hand was on the brake. The County Fire Department
13 broke the passenger side window, opened the doors, and placed the vehicle in park. Officers from
14 the San Bernardino County Sherriff's Department arrived on the scene and attempted to extricate
15 Respondent from the vehicle. Respondent was combative, resistant, and attempted to place the
16 vehicle in drive multiple times. Once an officer was finally able to remove Respondent from the
17 vehicle, another officer observed that Respondent had a pale face, his speech was unusually slow,
18 his coordination was poor, and there was a strong odor of an alcoholic beverage coming from his
19 breath and person. When asked if he had been drinking any alcoholic beverages, Respondent
20 stated, "yes, approximately two four locos." Respondent submitted to a preliminary alcohol
21 screening that resulted in a blood-alcohol content level of 0.23%.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol)**

24 11. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
25 in that Respondent used alcoholic beverages to an extent or in a manner dangerous or injurious to
26 himself, another person, or the public, as follows:

27 a. On or about November 16, 2013, Respondent operated a vehicle while having 0.21%
28 of alcohol in his blood. Complainant refers to, and by this reference incorporates, the allegations

1 set forth above in paragraph 9, subparagraph (b), as though fully set forth herein.

2 b. On or about October 12, 2013, San Bernardino County Sheriffs Department deputies
3 found Respondent in the parking lot of Bass Pro Shop after learning that he had almost been hit
4 by a vehicle. He had very slurred speech and was virtually incomprehensible. He was unable to
5 stand on his own and fell over twice. Respondent had bloodshot, red, watery eyes, an unsteady
6 gait, and a strong odor of an alcoholic beverage coming from his breath and person. Respondent
7 was unable to care for his own safety and was arrested for violating Penal Code section 647,
8 subdivision (f) [public intoxication].

9 c. On or about March 2, 2012, Respondent operated a vehicle while having 0.23% of
10 alcohol in his blood. Complainant refers to, and by this reference incorporates, the allegations set
11 forth above in paragraph 10, subparagraph (B), as though fully set forth herein.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Convictions Involving Alcohol)**

14 12. Respondent is subject to disciplinary action under Code section 4301, subdivision (k),
15 on the grounds of unprofessional conduct, in that Respondent sustained more than one
16 misdemeanor conviction involving the consumption of alcohol. Complainant refers to and by this
17 reference incorporates the allegations set forth above in paragraphs 9 and 10, as though fully set
18 forth herein.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Knowingly Made a False Statement of Fact)**

21 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (g),
22 on the grounds of unprofessional conduct, in that Respondent knowingly made a false statement
23 of fact when he failed to disclose his June 21, 2012 conviction for driving under the influence of
24 alcohol on his licensure renewal application. The Board received Respondent's renewal
25 application on September 20, 2013. On the form, Respondent falsely answered "no" to the
26 question "Since you last renewed your license, have you had any license disciplined by a
27 government agency or other disciplinary body; or, have you been convicted of any crime in any
28 state, the USA and its territories, military court or a foreign country?" Complainant refers to and

1 by this reference incorporates the allegations set forth above in paragraph 10, as though set forth
2 fully.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 104680, issued
7 to Casey M. O'Leary;
- 8 2. Ordering Casey M. O'Leary to pay the Board the reasonable costs of the investigation
9 and enforcement of this case, pursuant to section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11
12 DATED: _____

10/5/15



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

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