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4 **** *	9	BEFORE THE BOARD OF PHARMACY		
	10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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	12	In the Matter of the Accusation Against:	Case No. 5430	
	13	KELLY MARIE SAX 325 W. Third St.	DEFAULT DECISION AND ORDER	
	14	San Dimas, CA 91773	[Gov. Code, §11520]	
	15	Pharmacy Technician Registration No. TCH 47987		
	16	Respondent.		
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	19	FINDING	S OF FACT	
	20	1. On or about January 26, 2016, Complainant Virginia K. Herold, in her official		
	21	capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,		
	.22.	filed Accusation No. 5430 against Kelly Marie Sax ("Respondent") before the Board of		
•	23	Pharmacy. (Accusation attached as Exhibit A.)		
	24	2. On or about June 19, 2003, the Board of Pharmacy ("Board") issued Pharmacy		
	25	Technician Registration No. TCH 47987 to Resp	· · · · · · · · · · · · · · · · · · ·	
	26	expired on June 30, 2015, and has not been renewed. On or about October 15, 2015, the		
*	27	Pharmacy Technician Registration was cancelled pursuant to Business and Professions Code		
•	28	section 4402, subdivision (e).		
			DEFAULT DECISION & ORDER Case No. 5430	
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On or about February 8, 2016, Respondent was served by Certified and First Class 3. 1 Mail copies of the Accusation No. 5430, Statement to Respondent, Notice of Defense, Request 2 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 3 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code 4 section 4100, is required to be reported and maintained with the Board. Respondent's address of 5 record was and is: 325 W. Third St., San Dimas, CA 91773. 6 Service of the Accusation was effective as a matter of law under the provisions of 7 4. Government Code section 11505, subdivision (c) and/or Business & Professions Code section 8 9 124. Government Code section 11506(c) states, in pertinent part: 5. 10 11 (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 of the accusation . . . not expressly admitted. Failure to file a notice of defense 12 ... shall constitute a waiver of respondent's right to a hearing, but the agency in its 13 discretion may nevertheless grant a hearing. Respondent failed to file a Notice of Defense within 15 days after service upon her of 6. 14 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5430. 15 California Government Code section 11520(a) states, in pertinent part: 7. 16 17 (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 or upon other evidence and affidavits may be used as evidence without 18 any notice to respondent ..... 19 Pursuant to its authority under Government Code section 11520, the Board finds 8. 20 Respondent is in default. The Board will take action without further hearing and, based on the 21relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as 22 taking official notice of all the investigatory reports, exhibits and statements contained therein on 23file at the Board's offices regarding the allegations contained in Accusation No. 5430, finds that 24 the charges and allegations in Accusation No. 5430, are separately and severally, found to be true 25 26 and correct by clear and convincing evidence. III27 28 2

DEFAULT DECISION & ORDER Case No. 5430

Taking official notice of its own internal records, pursuant to Business and 9. 1 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  $\mathbf{2}$ and Enforcement are \$945.00 as of April 28, 2016. 3 **DETERMINATION OF ISSUES** 4 Based on the foregoing findings of fact, Respondent Kelly Marie Sax has subjected 1. 5 her Pharmacy Technician Registration No. TCH 47987 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 Registration based upon the following violations alleged in the Accusation which are supported 9 by the evidence contained in the Default Decision Evidence Packet in this case: 10 Business and Professions Code section 4301, subdivision (1), in conjunction with a. 11 California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a 12 crime substantially related to qualifications, functions, or duties of a registered pharmacy 13 technician which to a substantial degree evidence her present or potential unfitness to perform the 14 functions authorized by her registration in a manner consistent with the public health, safety, or 15 welfare. The underlying circumstance is that on or about December 19, 2014, after pleading nolo 16 contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code 17 section 23152, subdivision (b) [driving with a 0.08% or more, by weight, of blood alcohol 18 concentration ("BAC")], with a special allegation of Vehicle Code section 23578 [BAC of 0.15% 19 or more], in the criminal proceeding entitled The People of the State of California v. Kelly Marie 20 Pearson aka Kelly Marie Sax (Super, Ct. L.A. County, 2014, No. 4JB06260.) The Court placed 21 Respondent on three years summary probation with terms and conditions, ordered her to perform 22 21 days community labor, ordered her to complete a 9-Month First Offender Alcohol and Other 23 Drug Program and a Victim Impact Program of Mothers Against Drunk Driving, and ordered her 24 to pay fines. 25 Business and Professions Code section 4301, subdivision (h), on the grounds of Ъ. 26 unprofessional conduct, in that Respondent administered alcoholic beverage to herself to the 27

extent or in a manner as to be dangerous or injurious to herself or others.

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1 2	ORDER IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 47987, heretofore		
3	issued to Respondent Kelly Marie Sax, is revoked.		
4	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a		
5	written motion requesting that the Decision be vacated and stating the grounds relied on within		
6	seven (7) days after service of the Decision on Respondent. The agency in its discretion may		
7	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 July 1, 2016.		
9	It is so ORDERED on June 1, 2016.		
10	BOARD OF PHARMACY		
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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15	ByAmy Gutierrez, Pharm.D.		
16	Board President		
- 17	52076937.DOC		
18	DOJ Matter ID:LA2015500763		
19	Attachment: Exhibit A: Accusation		
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	4 DEFAULT DECISION & ORDER Case No. 5430		

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# Exhibit A

Accusation

1 2 3 4 5 6 7 8	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Senior Assistant Attorney General ARMANDO ZAMBRANO Supervising Deputy Attorney General State Bar No. 225325 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-2542 Facsimile: (213) 897-2804 Attorneys for Complainant BEFORE THE BOARD OF PHARMACY			
9 10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
11	In the Matter of the Accusation Against: Case No. 5430			
12	KELLY MARIE SAX A C C U S A T I O N			
13	aka KELLY MARIE PEARSON 325 W. Third St. San Dimas, CA 91773			
14	Pharmacy Technician Registration No. TCH			
15	47987			
16 17	Respondent.			
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 June 19, 2003, the Board of Pharmacy ("Board") issued Pharmacy			
23	Technician Registration No. TCH 47987 to Kelly Marie Sax, aka Kelly Marie Pearson.			
24	("Respondent"). The Pharmacy Technician Registration expired on June 30, 2015, and has not			
25	been renewed. On or about October 15, 2015, the Pharmacy Technician Registration was			
26	cancelled pursuant to Business and Professions Code section 4402, subdivision (e).			
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28	111			
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	ACCUSATION			

#### JURISDICTION

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

4. 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."

Section 4011 of the Code provides that "[t]he board shall administer and enforce this
 chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et secq.)] and the Uniform
 Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and
 Safety Code)."

15 6. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very
16 license issued may be suspended or revoked."

#### STATUTORY AND REGULATORY PROVISIONS

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7. Section 4301 of the Code states, in pertinent part:

"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:

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"(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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The conviction of a crime substantially related to the qualifications, functions, and 1 "(l) duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 2 (commencing with Section 801) of Title 21 of the United States Code regulating controlled 3 substances or of a violation of the statutes of this state regulating controlled substances or 4 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 5 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 6 The board may inquire into the circumstances surrounding the commission of the crime, in order 7 to fix the degree of discipline or, in the case of a conviction not involving controlled substances 8 or dangerous drugs, to determine if the conviction is of an offense substantially related to the 9 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 10 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 11 of this provision. The board may take action when the time for appeal has elapsed, or the 12 judgment of conviction has been affirmed on appeal or when an order granting probation is made 13 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203,4 of 14 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 15 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 16 indictment. . . ," 17

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8. 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."

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#### COST RECOVERY

9. 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

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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

# (Conviction of a Substantially Related Crime)

10. Respondent is subject to disciplinary action under Code section 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to qualifications, functions, or duties of a registered pharmacy technician which to a substantial degree evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare, as follow:

On or about December 19, 2014, after pleading nolo contendere, Respondent was 12 a, convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) 13 [driving with a 0.08% or more, by weight, of blood alcohol concentration ("BAC")], with a 14 special allegation of Vehicle Code section 23578 [BAC of 0.15% or more], in the criminal 15 proceeding entitled The People of the State of California v. Kelly Marie Pearson aka Kelly Marie 16Sax (Super, Ct. L.A. County, 2014, No. 4JB06260.) The Court placed Respondent on three years 17 summary probation with terms and conditions, ordered her to perform 21 days community labor, 18 ordered her to complete a 9-Month First Offender Alcohol and Other Drug Program and a Victim 19 Impact Program of Mothers Against Drunk Driving, and ordered her to pay fines. 20

b. The circumstances underlying the conviction are that on or about July 6, 2014, a
Glendora Police Department officer noticed Respondent driving erratically. The officer
conducted a traffic stop and when he spoke with Respondent, he observed that she had red,
watery eyes, her speech was slow and slurred, and the odor of alcohol was emitting from her
breath and person. Respondent was unable to satisfactorily complete field sobriety tests and her
BAC level was 0.31%.

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## SECOND CAUSE FOR DISCIPLINE

### (Dangerous Use of Alcohol)

11. Respondent is subject to disciplinary action under Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that on or about July 6, 2014, Respondent administered alcoholic beverage to herself to the extent or in a manner as to be dangerous or injurious to herself or others. Complainant refers to and by this reference incorporates the allegations set for above paragraph 10, subparagraph b, inclusive, as though set forth fully.

#### PRAYER

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

Revoking or suspending Pharmacy Technician Registration No. TCH 47987, issued
 to Respondent;

Ordering Respondent to pay the Board the reasonable costs of the investigation and
enforcement of this case, pursuant to section 125.3 of the Code; and

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

16 17 25/16 18 DATED: 19

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Executive Officer Board of Pharmacy Department of Consumer Affairs State of California *Complainant*