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

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| In the Matter of the Accusation Against: | Case No. 5430 |
| KELLY MARIE SAX 325 W. Third St. San Dimas, CA 91773 | DEFAULT DECISION AND ORDER [Gov. Code, §11520] |
| Pharmacy Technician Registration No. TCH 47987 | |
| Respondent. | |

FINDINGS OF FACT

1. On or about January 26, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5430 against Kelly Marie Sax ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about June 19, 2003, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 47987 to Respondent. The Pharmacy Technician Registration expired on June 30, 2015, and has not been renewed. On or about October 15, 2015, the Pharmacy Technician Registration was cancelled pursuant to Business and Professions Code section 4402, subdivision (e).

1 3. On or about February 8, 2016, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5430, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 325 W. Third St., San Dimas, CA 91773.

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/or Business & Professions Code section
9 124.

10 5. Government Code section 11506(c) states, in pertinent part:

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5430.

18 7. California Government Code section 11520(a) states, in pertinent part:

19 (a) If the respondent either fails to file a notice of defense . . . or to appear at
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence without
22 any notice to 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. 5430, finds that
28 the charges and allegations in Accusation No. 5430, are separately and severally, found to be true
and correct by clear and convincing evidence.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 47987, heretofore issued to Respondent Kelly Marie Sax, 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 July 1, 2016.

It is so ORDERED on June 1, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

52076937.DOC
DOJ Matter ID:LA2015500763

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 LINDA K. SCHNEIDER
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3 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5430

12 **KELLY MARIE SAX**
13 **aka KELLY MARIE PEARSON**
325 W. Third St.
14 San Dimas, CA 91773

ACCUSATION

15 Pharmacy Technician Registration No. TCH
47987

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 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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1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
2 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
3 may be included in a stipulated settlement.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Conviction of a Substantially Related Crime)**

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

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

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

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