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

In the Matter of the Accusation Against:  
**GABRIEL MAGANA**  
**19181 Bridlewood**  
**Perris, CA 92570**  
**Pharmacy Technician Registration No. TCH**  
**99110**  
  
Respondent.

Case No. 5594  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On November 20, 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. 5594 against Gabriel Magana (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On April 20, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 99110 to Respondent. The Pharmacy Technician Registration expired on July 31, 2015, and has not been renewed.
3. On December 1, 2015, Respondent was served by Certified and First Class Mail copies of Accusation No. 5594, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section

1 4100, is required to be reported and maintained with the Board. Respondent's address of record  
2 was and is 19181 Bridlewood, Perris, CA 92570,

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

5 5. On January 6, 2016, the aforementioned documents were returned by the U.S.  
6 Postal Service marked "Unclaimed." The address on the documents was the same as the address  
7 on file with the Board. Respondent failed to maintain an updated address with the Board and the  
8 Board has made attempts to serve the Respondent at the address on file. Respondent has not  
9 made himself available for service and therefore, has not availed himself of his right to file a  
10 notice of defense and appear at hearing.

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon  
18 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
19 No. 5594.

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

21 (a) If the respondent either fails to file a notice of defense or to appear at  
22 the hearing, the agency may take action based upon the respondent's express  
23 admissions or upon other evidence and affidavits may be used as evidence  
24 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  
file at the Board's offices regarding the allegations contained in Accusation No. 5594, finds that  
the charges and allegations in Accusation No. 5594, are separately and severally, found to be true  
and correct by clear and convincing evidence.



1 2015, he used alcohol to the extent and in a manner that was dangerous and injurious to himself  
2 and to the public.

3 d. Respondent has subjected his Pharmacy Technician Registration to  
4 discipline under Code section 4301, subdivision (k) in that on September 12, 2013 and June 9,  
5 2015, he was convicted of more than one misdemeanor involving the use or consumption of  
6 alcohol.

7 **ORDER**

8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 99110, heretofore  
9 issued to Respondent Gabriel Magana, is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
11 written motion requesting that the Decision be vacated and stating the grounds relied on within  
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

14 This Decision shall become effective on March 11, 2016.

15 It is so ORDERED February 10, 2016.

16 BOARD OF PHARMACY  
17 DEPARTMENT OF CONSUMER AFFAIRS  
18 STATE OF CALIFORNIA

19 

20  
21 By \_\_\_\_\_

22 Amy Gutierrez, Pharm.D.  
23 Board President

24  
25 81239681.DOC  
DOJ Matter ID:SD2015802221

26 Attachment:  
27 Exhibit A: Accusation

# Exhibit A

Accusation

(GABRIEL MAGANA)

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2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
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*Attorneys for Complainant*  
8

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

11  
12 In the Matter of the Accusation Against:

Case No. 5594

13 **GABRIEL MAGANA**  
14 **19181 Bridlewood**  
**Perris, CA 92570**

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

15 **Pharmacy Technician Registration No. TCH 99110**

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 April 20, 2010, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 99110 to Gabriel Magana (Respondent). Respondent has also been  
24 known as Gabriel Jose Magana. The Pharmacy Technician Registration expired on July 31,  
25 2015, and has not been renewed.

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1 **JURISDICTION**

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

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

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law,  
10 the placement of a license on a retired status, or the voluntary surrender of a  
11 license by a licensee shall not deprive the board of jurisdiction to commence or  
12 proceed with any investigation of, or action or disciplinary proceeding against, the  
13 licensee or to render a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

16 (a) Considering the denial of a license by the board under Section 480; or

17 (b) Considering suspension or revocation of a license under Section 490.

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

20 7. Section 4301 of the Code states:

21 The board shall take action against any holder of a license who is guilty of  
22 unprofessional conduct or whose license has been procured by fraud or  
23 misrepresentation or issued by mistake. Unprofessional conduct shall include, but  
24 is not limited to, any of the following:

25 (h) The administering to oneself, of any controlled substance, or the use of  
26 any dangerous drug or of alcoholic beverages to the extent or in a manner as to be  
27 dangerous or injurious to oneself, to a person holding a license under this chapter,  
28 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.

///

1 (k) The conviction of more than one misdemeanor or any felony involving  
2 the use, consumption, or self-administration of any dangerous drug or alcoholic  
3 beverage, or any combination of those substances.

4 (l) The conviction of a crime substantially related to the qualifications,  
5 functions, and duties of a licensee under this chapter. The record of conviction of  
6 a violation of Chapter 13 (commencing with section 801) of Title 21 of the United  
7 States Code regulating controlled substances or of a violation of the statutes of  
8 this state regulating controlled substances or dangerous drugs shall be conclusive  
9 evidence of unprofessional conduct. In all other cases, the record of conviction  
10 shall be conclusive evidence only of the fact that the conviction occurred. The  
11 board may inquire into the circumstances surrounding the commission of the  
12 crime, in order to fix the degree of discipline or, in the case of a conviction not  
13 involving controlled substances or dangerous drugs, to determine if the conviction  
14 is of an offense substantially related to the qualifications, functions, and duties of  
15 a licensee under this chapter. A plea or verdict of guilty or a conviction following  
16 a plea of *nolo contendere* is deemed to be a conviction within the meaning of this  
17 provision. The board may take action when the time for appeal has elapsed, or the  
18 judgment of conviction has been affirmed on appeal or when an order granting  
19 probation is made suspending the imposition of sentence, irrespective of a  
20 subsequent order under section 1203.4 of the Penal Code allowing the person to  
21 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
22 the verdict of guilty, or dismissing the accusation, information, or indictment.

23 .....

24 **REGULATORY PROVISIONS**

25 8. California Code of Regulations, title 16, section 1769, states:

26 .....

27 (b) When considering the suspension or revocation of a facility or a  
28 personal license on the ground that the licensee or the registrant has been  
convicted of a crime, the board, in evaluating the rehabilitation of such person and  
his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or  
offense(s).
- (4) Whether the licensee has complied with all terms of parole,  
probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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



1 Business and Professions Code, a crime or act shall be considered substantially  
2 related to the qualifications, functions or duties of a licensee or registrant if to a  
3 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.

#### 4 5 **COST RECOVERY**

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

#### 12 **FIRST CAUSE FOR DISCIPLINE**

13 **(September 12, 2013 Conviction for Driving with a BAC of .08% or More on July 20, 2013)**

14 11. Respondent has subjected his Pharmacy Technician Registration to discipline  
15 under Code sections 490 and 4301, subdivision (1), in that he was convicted of a crime that is  
16 substantially related to the qualifications, functions, and duties of a registered pharmacy  
17 technician. The circumstances are as follows:

18 a. On September 12, 2013, in a criminal proceeding entitled *The People of*  
19 *the State of California v. Gabriel Jose Magana*, in the Orange County Superior Court, West  
20 Justice Center, Case Number 13WM08474, Respondent was convicted on his plea of guilty of  
21 violating Vehicle Code (VC) section 23152, subdivision (b), driving with a blood alcohol  
22 concentration (BAC) of 0.08 percent or more, a misdemeanor. Respondent admitted and the  
23 court found true the allegation that at the time of violation of VC section 23152, subdivision (b),  
24 his BAC was .15 percent or more, a sentencing enhancement under VC section 23578. A  
25 misdemeanor charge for violation of VC section 23152, subdivision (a), driving while under the  
26 influence of alcohol (DUI), with similar enhancement, and an infraction charge for violation of  
27 Health and Safety Code (HSC) section 11357, subdivision (b), possession of marijuana weighing  
28 28.5 grams or less, were dismissed under a plea bargain.

1           b.       As a result of the conviction, on September 12, 2013, Respondent was  
2 sentenced to three years informal probation under standard alcohol conditions and ordered to pay  
3 fines, fees, restitution, penalties, and assessments. Respondent was also ordered to attend and  
4 satisfactorily complete a six-month First Offender Alcohol Program and a Mothers Against  
5 Drunk Driving (MADD) Victim Impact Panel. Respondent was further ordered to perform 60  
6 hours of community service.

7           c.       On April 21, 2014, Respondent's probation was revoked for failure to  
8 complete 60 hours of community service. On May 7, 2014, Respondent was found to have failed  
9 to complete 60 hours of community service and his probation was reinstated and modified. On  
10 August 23, 2014, Respondent's probation was revoked for failure to complete 60 hours of  
11 community service. On September 4, 2014, Respondent was found in violation of probation for  
12 failure to complete 60 hours of community service. As a result of the violation, Respondent's  
13 probation was reinstated and modified. Respondent was sentenced to five days in the Orange  
14 County Jail, which was stayed pending completion of the 60 hours of community service. On  
15 January 26, 2015, Respondent was arrested for DUI of alcohol, as detailed in paragraph 12,  
16 below. On January 30, 2015, Respondent's probation was revoked for termination in the six-  
17 month First Offender Alcohol Program and failure to pay fines due. On June 22, 2015,  
18 Respondent was found in violation of his probation, which was reinstated and modified. On  
19 August 4, 2015, Respondent was found in violation of probation. As a result of the violation,  
20 Respondent's probation was terminated, reinstated, and modified to expire on March 1, 2017.

21           d.       The facts that led to the conviction are that on July 20, 2013, while driving  
22 northbound on Magnolia Street in Fountain Valley, California, Respondent rear-ended a car that  
23 was slowing down in anticipation for a red light at the Slater Avenue intersection. An officer on  
24 routine patrol from the Fountain Valley Police Department (FVPD) happened to pass by the  
25 collision scene and initiated an investigation. Another officer interviewed Respondent. During  
26 the interview, the officer smelled alcohol coming from Respondent's mouth. Respondent's eyes  
27 were bloodshot red and watery and his eyelids sleepy. Respondent failed to perform a series of  
28 field sobriety tests as explained and demonstrated. During a search of Respondent's vehicle, the

1 officer found 4.3 grams of marijuana inside a prescription bottle. Respondent admitted to owning  
2 the marijuana and to not having a prescription for it. Respondent was arrested for DUI and was  
3 transported to the FVPD, where he consented to a blood draw. Respondent's subsequent  
4 chemical test results indicated a BAC of .15 percent.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(June 9, 2015 Conviction for Driving with a BAC of .08% or More on January 26, 2015)**

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

11 a. On June 9, 2015, in a criminal proceeding entitled *The People of the State*  
12 *of California v. Gabriel Jose Magana*, in the San Bernardino County Superior Court, Rancho  
13 Cucamonga District, Case Number TWV1500943, Respondent was convicted on his plea of  
14 guilty of violating VC section 23152, subdivision (b), driving with a BAC of 0.08 percent or  
15 more, a misdemeanor. Respondent admitted and the court found true the allegation that within  
16 ten years of violating VC section 23152, subdivision (b), mentioned above, on July 17, 2005, he  
17 committed a separate violation of VC section 23152, subdivision (a), DUI, resulting in a  
18 misdemeanor conviction on December 14, 2005, in case number CN199287, detailed in  
19 paragraph 15, below. Respondent also admitted and the court found true the allegation that on  
20 July 20, 2013, Respondent also committed a separate violation of VC section 23152, subdivision  
21 (b), resulting in a misdemeanor conviction on June 9, 2015, in case number TWV1500943,  
22 detailed in paragraph 11, above. Both allegations are sentencing enhancements under VC section  
23 23546, subdivision (a). Respondent further admitted and the court found true the allegation that  
24 at the time of violation of VC section 23152, subdivision (b), his BAC was .15 percent or more, a  
25 sentencing enhancement under VC section 23578. A misdemeanor charge for violation of VC  
26 section 23152, subdivision (a), DUI of alcohol, with similar enhancements, was dismissed under  
27 a plea bargain.

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**FOURTH CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct – Multiple Alcohol Related Misdemeanor Convictions)**

14. Respondent has subjected his Pharmacy Technician Registration to discipline under Code section 4301, subdivision (k) in that on September 12, 2013 and June 9, 2015, he was convicted of more than one misdemeanor involving the use or consumption of alcohol.

**DISCIPLINARY CONSIDERATIONS**

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

a. On December 14, 2005, in a prior criminal proceeding entitled *The People of the State of California v. Gabriel Jose Magana*, in the San Diego County Superior Court, North County Division, Case Number CN199287, Respondent was convicted on his plea of guilty of violating VC sections 23152, subdivision (a), DUI of alcohol, a misdemeanor, and 22348, subdivision (b), driving a vehicle upon a highway at a speed greater than 100 miles per hour, an infraction. Misdemeanor charges for violation of VC sections 23152, subdivision (b), driving with a BAC of 0.08 percent or more, and 23103, subdivision (a), reckless driving, and an infraction charge for violation of VC section 23140, subdivision (a), person under 21 driving with .05 percent BAC, were dismissed under a plea bargain.

b. As a result of the convictions, on December 14, 2005, Respondent was sentenced to be committed to the custody of the San Diego County Sheriff for 180 days, which was suspended for three years. Respondent was granted 36 months summary probation under standard alcohol conditions and ordered to pay fines, restitution, and penalty assessments, with credit for the equivalent of one day served. Respondent was also ordered to attend and satisfactorily complete a First Conviction Program and a Survival Toward Adult Referral Program. Respondent's privilege to drive was restricted for 365 days.

c. The facts that led to the convictions are that on July 17, 2005, Respondent passed a patrol vehicle while driving northbound at a speed over 100 miles per hour on interstate highway I-5 in Carlsbad, California. The Carlsbad Police Department officer driving the patrol vehicle followed Respondent at about 120 miles per hour before initiating an enforcement stop.

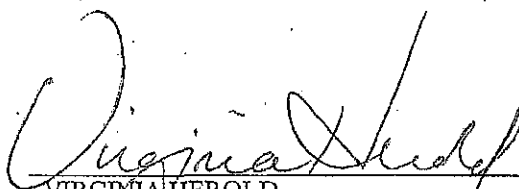
1 Upon contact with Respondent, the officer immediately smelled alcohol coming from  
2 Respondent's breath. Respondent's speech was slow, soft, and slurred. Respondent admitted to  
3 drinking four or five beers earlier. Respondent was subsequently arrested and taken to the  
4 Carlsbad Police Station, where he provided two breath samples, which both indicated a BAC of  
5 .09 percent. Respondent was thereafter transported and booked into the Vista Detention Facility.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration Number TCH 99110,  
10 issued to Gabriel Magana;
- 11 2. Ordering Gabriel Magana to pay the Board of Pharmacy the reasonable costs of  
12 the investigation and enforcement of this case, pursuant to Business and Professions Code  
13 section 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

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18 DATED: 11/20/15



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

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