- 3. On or about July 1, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5645, 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 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 439 S. Vancouver Ave., Los Angeles, CA 90022.
- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
 - 5. Government Code section 11506(c) states, in pertinent part:
 - (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 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.
- 6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5645.
 - 7. California Government Code section 11520(a) states, in pertinent part:
 - (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 any notice to respondent
- 8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as 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. 5645, finds that the charges and allegations in Accusation No. 5645, are separately and severally, found to be true and correct by clear and convincing evidence.

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9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are \$1,042.50 as of August 2, 2016.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Armando Hernandez has subjected his Pharmacy Technician Registration No. TCH 122156 to discipline.
 - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:
- a. Business and Professions Code section 4301, subdivision (I), 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 his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. Specifically, on or about July 1, 2015, Respondent was convicted of violating Vehicle Code section 23103 [wet reckless] pursuant to Vehicle Code section 23103.5 in the criminal proceeding entitled *The People of the State of California v. Armando Hernandez* (Super. Ct. L.A. County, 2015, No. 5EA02212). The court placed Respondent on 36 months summary probation, ordered him to attend an alcohol education program, and pay fines.
- b. Business and Professions Code section 4301, subdivision (h), on the grounds of unprofessional conduct, Respondent used an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to himself or others when he drove a vehicle while being under the influence of alcohol.

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<u>ORDER</u> 1 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 122156, heretofore 2 issued to Respondent Armando Hernandez, is revoked. 3 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a 4 written motion requesting that the Decision be vacated and stating the grounds relied on within 5 seven (7) days after service of the Decision on Respondent. The agency in its discretion may 6 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute. 7 This Decision shall become effective at 5:00 p.m. on October 14, 2016. 8 It is so ORDERED on September 14, 2016. 9 10 **BOARD OF PHARMACY** 11 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 12 13 14 15 By 16 Amy Gutierrez, Pharm.D. **Board President** 17 18 52194892,DOC DOJ Matter ID; LA2015502243 19 Attachment: 20 Exhibit A: Accusation 21 22 23 24 25 26 27 28

Exhibit A

Accusation

1	KAMALA D. HARRIS		
2	Attorney General of California LINDA K, SCHNEIDER		
3	Senior Assistant Attorney General ARMANDO ZAMBRANO		
4	Supervising Deputy Attorney General State Bar No. 225325		
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
6	Telephone: (213) 897-2542 Facsimile: (213) 897-2804		
7	Attorneys for Complainant		
8	BEFORE THE		
⊹9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CA	LIFORNIA	
11	In the Matter of the Accusation Against:	Case No. 5645	
12	ARMANDO HERNANDEZ	ACCUSATION	
13	439 S. Vancouver Ave. Los Angeles, CA 90022		
14	Pharmacy Technician Registration No. TCH		
15			
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, Department of Consumer Affairs.		
21	2. On or about March 27, 2012, the Board of Pharmacy ("Board") issued Pharmacy		
22	Technician Registration No. TCH 122156 to Armando Hernandez ("Respondent"). The		
23	Pharmacy Technician Registration was in full force and effect at all times relevant to the charges		
24	brought herein and will expire on June 30, 2017, unless renewed.		
25	<u>JURISDICTION</u>		
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 ("Code") unless otherwise		
28	indicated.		
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ACCUSATION

In the Matter of the Accusation Against: ARMANDO HERNANDEZ

- 4. 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)."
- 5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very license issued may be suspended or revoked."
 - 6. 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."

STATUTORY AND REGULATORY PROVISIONS

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:

. . . .

- "(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- "(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 "(I)" duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment...."
 - 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."

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

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 (I), 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 his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare, as follow:
- a. On or about July 1, 2015, Respondent was convicted of violating Vehicle Code section 23103 [wet reckless] pursuant to Vehicle Code section 23103.5 in the criminal proceeding entitled *The People of the State of California v. Armando Hernandez* (Super. Ct. L.A. County, 2015, No. 5EA02212). The court placed Respondent on 36 months summary probation, ordered him to attend an alcohol education program, and pay fines.
- b. The circumstances surrounding the convictions are that on or about January 20, 2015, California Highway Patrol officers stopped Respondent's vehicle for traffic violations. Upon contact, the officers smelled the odor of alcohol and observed Respondent had slurred speech, and red and water eyes. Respondent admitted to drinking alcohol before driving while on a break from work. Respondent failed to satisfactorily perform Field Sobriety Tests as explained and demonstrated. Respondent's blood alcohol concentration was 0.08%.

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 January 20, 2015, Respondent used an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to himself or others when he drove a vehicle while being under the influence of alcohol. Complainant refers to

1	and by this reference incorporates the allegations set forth above in paragraph 10, subparagraph b,	
2	inclusive, as though set forth fully.	
3	<u>PRAYER</u>	
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 122156, issued	
7	to Armando Hernandez;	
8	2. Ordering Armando Hernandez to pay the Board the reasonable costs of the	
9	investigation and enforcement of this case, pursuant to Code section 125.3; and,	
10	3. Taking such other and further action as deemed necessary and proper.	
11		
12	1 - Note that the state of the	
13	DATED: 6/13/16 Orginia Levely	
14	VIRGINIA HEROLD Executive Officer	
15	Board of Pharmacy Department of Consumer Affairs	
16	State of California Complainant	
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