

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

In the Matter of the Accusation
Against:

ALYSSA MICHELLE HAMLIN

Pharmacy Technician No. TCH 124537

Respondent.

Case No. 5831

OAH No. 2016120868

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on June 7, 2017.

It is so ORDERED on May 8, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ALYSSA MICHELLE HAMLIN,

Pharmacy Technician Registration No. TCH
124537

Respondent.

Case No. 5831

OAH No. 2016120868

PROPOSED DECISION

Administrative Law Judge Michael A. Scarlett, State of California, Office of Administrative Hearings, heard this matter on March 7, 2017, in Oakland, California.

Char Sachson, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Kirk Elliot, Attorney at Law, represented respondent Alyssa Michelle Hamlin (respondent) who was present at hearing.

The matter was submitted for decision on March 7, 2017.

FACTUAL FINDINGS

1. On July 8, 2016, Virginia Herold (complainant) issued the Accusation solely in her capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California. On September 20, 2016, respondent filed a Notice of Defense and this hearing ensued.

2. On September 20, 2012, the Board issued Pharmacy Technician Registration Number TCH 124537 (Registration) to respondent. The Registration was in full force and effect at all times relevant to the charges in the Accusation and will expire on July 31, 2018, unless renewed.

Criminal Convictions

3. On May 16, 2016, in the Superior Court of California, County of Santa Clara, in Case No. F1558323, respondent was convicted on her plea of nolo contendere to driving under the influence (DUI) of alcohol with a blood alcohol level in excess of 0.08 percent, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. It was further alleged, and respondent admitted, that respondent's blood alcohol level was 0.15 percent or more by weight, within the meaning of Vehicle Code section 23578. Imposition of sentence was suspended and respondent was placed on probation for three years under specified terms and conditions, including that she serve 45 days in jail, with credit for 23 days time served, that she enroll in a 18-month DUI Program, and that she pay fines, fees and restitution in the amount of approximately \$2,234.

4. The facts and circumstances underlying respondent's conviction are that on September 6, 2015, respondent collided with the rear of another vehicle while driving on Highway 101 in Morgan Hill, California. The vehicles were going approximately 65 miles per hour and respondent's vehicle ran the other vehicle off of the road. Respondent failed field sobriety tests, which measured her blood alcohol level at .224 and .225 percent, and was uncooperative with arresting officers. A subsequent blood test measured respondent's blood alcohol level at .239 percent.

5. As a factor in determining discipline, the Board alleges that on June 21, 2013, the Board issued respondent Citation Number CI 2012 56022, and ordered her to pay a fine of \$800. The Citation resulted from an April 2, 2013 DUI conviction, in violation of Vehicle Code section 23152, subdivision (b). At hearing, respondent admitted this conviction and that she had a blood alcohol level of .13 percent when she was arrested. Respondent was placed on probation, ordered to pay fines and fees, and ordered to enroll in a three-month alcohol program. Respondent believes that she completed her probation. Respondent did not appeal the Board's Citation and paid the \$800 fine.

Respondent's Evidence

6. Respondent is 25 years old and single, and currently resides with her father. She graduated from pharmacy technician school in May 2012, and began working at Walgreens Pharmacy in July 2012, where she is currently employed. Respondent has been a pharmacy technician since September 2012, and began working as a pharmacy technician at Walgreens Pharmacy at that time. Respondent worked 30 to 40 hours per week at Walgreens Pharmacy, except for a period that she worked part-time while participating in the residential and sober living rehabilitation programs at the Amicus House. Respondent's manager at Walgreens Pharmacy, Marina Danker, wrote a character reference on behalf of respondent attesting to respondent's hard work and dependability as a pharmacy technician. She described respondent as a hard-working, trustworthy individual who is very customer service oriented, and who works well with, and has great rapport with her coworkers.

7. Immediately after her September 6, 2015 DUI arrest respondent stopped drinking alcohol and voluntarily enrolled in alcohol treatment programs. Respondent took a leave of absence from work and enrolled in a 30-day alcohol residential treatment program at Amicus House from October 12, 2015, through November 13, 2015. Thereafter, she remained with Amicus House for six additional months in their residential sober living environment house, until May 17, 2016. Simultaneously while she was living in the Amicus House residential sober living environment house, respondent enrolled in a six-month Kaiser Permanente Chemical Dependency Recovery Program (CDRP) in November 2015, and successfully completed this program in May 2016.

8. In addition, respondent began attending Alcoholics Anonymous (AA) meetings in October 2015, while living at Amicus House and enrolled in the Kaiser CDRP, and completed the AA 12-Step Program. She continues to attend AA meetings and has a sponsor through AA, Julie T., who wrote a character reference on respondent's behalf. Julie T. has been respondent's AA sponsor since December 1, 2015, and has met with respondent weekly since that time. Julie T. confirmed that respondent is actively involved in the AA 12-Step Program and that respondent follows the dictates of that program.

9. Respondent admitted that in March 2016, she had a relapse when she attended a family member's birthday party and had a couple of drinks. She tested positive after a urinalysis test at Amicus House, but was allowed to remain in the Amicus House sober living environment house after she admitted her relapse and continued to attend the Kaiser CDRP.

10. Following her May 16, 2016 DUI conviction, respondent enrolled in a court-ordered 18-month DUI program on August 31, 2016. She attends this program once per week, two hours per session. As stated above, respondent additionally attends two to three AA meetings per week. Respondent has paid the fines, fees and restitution ordered by the court and her probation is expected to terminate in May 2019.

11. At hearing, respondent expressed sincere remorse for her conduct. The evidence established that respondent has been working very hard at rehabilitation. Respondent admitted that she did not take her first DUI conviction in 2013 seriously and did not learn her lesson from this conviction. However, the May 16, 2016 DUI conviction had a huge impact on respondent's life. She realized that her problem with alcohol was a lot bigger than herself, and that she needed help in addressing her alcohol problem. Respondent realized that her alcohol problem was jeopardizing her career as a pharmacy technician, a career that means the world to her. She does not want to lose her Registration. Respondent also has a personal goal of returning to pharmacy school to become a pharmacist.

12. Although respondent had difficulty recalling the steps in the AA 12-Step Program when asked by the Board's counsel on cross-examination, respondent was nervous during her testimony which affected her recollection of the specific names of the steps in the program. However, there is significant credible evidence of respondent's conscientious and ongoing efforts at rehabilitation. Additionally, respondent was forthright and honest in her

testimony. She took full responsibility for her actions and expressed sincere regret for her conduct.

13. Respondent is young, and did not start drinking alcohol until she was 21 years old because her mother was an alcoholic. She now realizes that she is physically unable to drink, which she also relates to her mother's alcoholism. Respondent believes that the stress and anxiety she experienced as a young adult contributed to her making poor choices in her abuse of alcohol. However, as she's gotten older, respondent has learned to deal with her stress and anxiety without alcohol, and she fully understands that attending AA meetings and rehabilitation are a life-long endeavor, and that she will need to be diligent in maintaining a sober living life style. She no longer associates with the friends she drank with in the past, and respondent has not drank alcohol since March 2016. She has successfully completed all of the requirements of the court-ordered 18-month DUI program as of the date of hearing.

Costs of Investigation and Prosecution

14. The Board certified that its total cost for prosecuting this case was \$3,015. This cost is reasonable and justified given the nature and scope of the allegations in the Accusation.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301¹ provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Section 4301 provides, in relevant part, that "unprofessional conduct" means:

[¶] . . . [¶]

(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.

[¶] . . . [¶]

¹ All further statutory references shall be to the Business and Professions Code unless otherwise specified.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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

(l) The conviction of a crime that is substantially related to the qualifications, functions, and duties of licensee . . .

[¶] . . . [¶]

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the Board or by any other state or federal regulatory agency.

2. Section 490, subdivision (a), provides that “a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

3. California Code of Regulations, title 16, section 1770, provides that “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.”

Causes for Discipline

4. Cause exists to discipline respondent’s Registration pursuant to sections 4301, subdivisions (h), (j), (k), (l), and (o), and 490, subdivision (a), and California Code of Regulations, title 16, section 1770, in that respondent incurred two DUI convictions in May 2016 and April 2013, that are substantially related to the qualifications, functions, and duties of a Pharmacy Technician, by reason of Factual Findings 3 through 5.

Rehabilitation

5. California Code of Regulations, title 16, section 1769, subdivision (c), provides that:

When considering the suspension or revocation of a facility or a 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.

6. Respondent presented sufficient evidence of rehabilitation, by reason of Factual Findings 6 through 13. Prior to being convicted on May 16, 2016, respondent voluntarily enrolled in a 30-day alcohol residential treatment program at Amicus House, and remained at Amicus House for six months in a sober living environment house. She also enrolled in the Kaiser CDRP and began attending the AA meetings and working towards completing the AA 12-Step program all before she was convicted and sentenced by the court in May 2016. Respondent's voluntary rehabilitation initiative showed that she was resolute and vested in her desire to recover from her alcohol dependency and that she understood she needed professional help to obtain sobriety.

7. Although respondent's second DUI offense was of a severe nature, and she had a prior criminal offense for DUI, and that conviction occurred less than one year ago, respondent has complied with the terms and conditions of her probation. As stated above, the evidence established that respondent is well on the way to successful recovery and rehabilitation from her alcohol addiction. On these facts, allowing respondent to retain a properly restricted Pharmacy Technician Registration would not pose a significant risk to the public's health, safety and welfare.

Cost Recovery

8. Section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

9. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that the imposition of costs for investigation and prosecution did not violate due process in a case involving the discipline of a licensee. The Supreme Court set forth four factors that the licensing agency was required to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments.

10. Cause exists to award the Board’s cost of prosecution pursuant to section 125.3, in that the Board’s costs are determined to be reasonable, by reason of Factual Finding 14. Respondent admitted that the allegations in the Accusation. Respondent presented no evidence regarding her financial inability to pay the Board’s reasonable costs of prosecution. Consequently, respondent shall reimburse the Board’s prosecution costs in the amount of \$3,015.

ORDER

Pharmacy Technician Registration No. TCH 124537, issued to respondent Alyssa Michelle Hamlin is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions of probation:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment

a conviction of any crime

discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

3. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5831, OAH Case No. 2016120868, and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5831, OAH Case No. 2016120868, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5831, OAH Case No. 2016120868, in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that she has read the decision in case number 5831,

OAH Case No. 2016120868, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of prosecution in the amount of \$3,015. Respondent shall make said payments pursuant to a plan approved by the Board during the course of the probationary period. There shall be no deviation from the Board approved schedule of payments absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

8. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation,

including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 100 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met.

During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 100 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 100 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 100 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

17. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: April 6, 2017

DocuSigned by:

Michael A. Scarlett

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MICHAEL A. SCARLETT
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

**ALYSSA MICHELLE HAMLIN
830 Via Castana Court
Morgan Hill, CA 95037**

**Pharmacy Technician Registration
No. TCH 124537**

Case No. 5831

Respondent.

ORDER VACATING DEFAULT DECISION

On September 30, 2016, pursuant to Government Code section 11520, subdivision (a), a Default Decision and Order revoking the Pharmacy Technician Registration No. TCH 124537 held by Alyssa Michelle Hamlin was issued by the Board.

On or about October 7, 2016, a timely motion to set aside the default decision pursuant to Government Code section 11520, subdivision (c), was received from Respondent. A quorum of the Board having considered that motion, it is hereby ORDERED that:

- (1) the Default Decision and Order dated September 30, 2016, is vacated; and
- (2) this matter shall be set for hearing. Respondent shall be notified of the time and place of said hearing when it has been ascertained.

IT IS SO ORDERED this 18th day of October, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ALYSSA MICHELLE HAMLIN
830 Via Castana Court
Morgan Hill, CA 95037

Pharmacy Technician Registration No. TCH
124537

Respondent.

Case No. 5831

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 8, 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. 5831 against Alyssa Michelle Hamlin (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 20, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 124537 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5831 and will expire on July 31, 2018, unless renewed.

3. On or about August 1, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5831, Statement to Respondent, Notice of Defense. Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is:

5 830 Via Castana Court
6 Morgan Hill, CA 95037.

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. On or about August 8, 2016, receipt of the aforementioned documents was confirmed
11 by return of the signed U.S. Postal Service Domestic Return Receipt.

12 6. Government Code section 11506(c) states, in pertinent part:

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5831.

20 8. California Government Code section 11520(a) 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 without
24 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. 5831, finds that
the charges and allegations in Accusation No. 5831, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
 2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
 3 and Enforcement is \$1,315.00 as of August 22, 2016.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Alyssa Michelle Hamlin has
 6 subjected her Pharmacy Technician Registration No. TCH 124537 to discipline.

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

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

11 a. Business and Professions Code section 490 and/or 4301(l), and California Code of
 12 Regulations, title 16, section 1770, for conviction of a substantially related crime;

13 b. Business and Professions Code section 4301(h), for using alcohol in a manner
 14 dangerous to herself or others;

15 c. Business and Professions Code section 4301(j), for violating the statutes of this state
 16 as alleged in the Accusation;

17 d. Business and Professions Code section 4301(k), for having two alcohol related
 18 misdemeanor convictions; and

19 e. Business and Professions Code section 4301(o), for violating, or attempting to
 20 violate, directly or indirectly, applicable state laws and regulations governing pharmacy, as
 21 alleged in the Accusation.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 124537, heretofore issued to Respondent Alyssa Michelle Hamlin, 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 October 31, 2016.

It is so ORDERED on September 30, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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DOJ Matter ID:SF2016200798

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(ALYSSA MICHELLE HAMLIN)

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Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
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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. 5831

12 **ALYSSA MICHELLE HAMLIN**
13 **830 Via Castana Court**
Morgan Hill, CA 95037

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **124537**

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 September 20, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 124537 to Alyssa Michelle Hamlin (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 July 31, 2018, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. 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."

1 STATUTORY PROVISIONS

2 6. Section 4301 of the Code states:

3 "The board shall take action against any holder of a license who is guilty of unprofessional
4 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

5 Unprofessional conduct shall include, but is not limited to, any of the following:

6 ...

7 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
8 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
9 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
10 to the extent that the use impairs the ability of the person to conduct with safety to the public the
11 practice authorized by the license.

12 ...

13 "(j) The violation of any of the statutes of this state, or any other state, or of the United
14 States regulating controlled substances and dangerous drugs.

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

18 ...

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or
27 dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

8 . . .

9 " (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violation of or conspiring to violate any provision or term of this chapter or of the applicable
11 federal and state laws and regulations governing pharmacy, including regulations established by
12 the board or by any other state or federal regulatory agency.

13 . . . "

14 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
15 revoke a license on the ground that the licensee has been convicted of a crime substantially related
16 to the qualifications, functions, or duties of the business or profession for which the license was
17 issued.

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

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

25 COST RECOVERY

26 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (SUBSTANTIALLY RELATED CRIMINAL CONVICTION)

5 10. Respondent is subject to discipline under the following section(s) of the Code: 490
6 and/or 4301(l), and California Code of Regulations, title 16, section 1770, for conviction of a
7 substantially related crime, in that on or about May 16, 2016, Respondent was convicted in
8 *People of the State of California v. Alyssa Michelle Hamlin*, Case No. F1558323 in Santa Clara
9 County Superior Court of violating Vehicle Code sections 23152(b) (driving with blood alcohol
10 level in excess of .08%), a misdemeanor. Respondent was sentenced to serve 45 days in county
11 jail, and three years probation. The circumstances of the conviction are that on or about
12 September 6, 2015, Respondent collided with the back of another vehicle while driving on
13 Highway 101 in Morgan Hill, California. The vehicles were driving approximately 65 miles per
14 hour, and Respondent's vehicle ran the other vehicle off the road. Respondent failed field
15 sobriety tests and was uncooperative with arresting officers. Her blood alcohol measured .239%.

16 SECOND CAUSE FOR DISCIPLINE

17 (USING ALCOHOL IN A MANNER DANGEROUS TO SELF OR OTHERS)

18 11. Respondent is subject to discipline under the following section(s) of the Code:
19 4301(h), in that she used alcohol in a manner dangerous to herself or others, as alleged above in
20 paragraph 10.

21 THIRD CAUSE FOR DISCIPLINE

22 (VIOLATION OF STATUTES OF THIS STATE)

23 12. Respondent is subject to discipline under the following section(s) of the Code:
24 4301(j), in that she violated statutes of this state as alleged herein.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (MORE THAN ONE ALCOHOL RELATED MISDEMEANOR CONVICTIONS)

3 13. Respondent is subject to discipline under the following section(s) of the Code:
4 4301(k), in that she had two alcohol related misdemeanor convictions, as alleged above in
5 paragraph 10, and below in Discipline Considerations.

6 FIFTH CAUSE FOR DISCIPLINE

7 (VIOLATING PHARMACY LAWS AND REGULATIONS)

8 14. Respondent is subject to discipline under the following section(s) of the Code:
9 4301(o), in that she violated, or attempted to violate, directly or indirectly, applicable state laws
10 and regulations governing pharmacy, as alleged above.

11 DISCIPLINE CONSIDERATIONS

12 15. To determine the degree of discipline, if any, to be imposed on Respondent,
13 Complainant alleges that on or about June 21, 2013, in a prior action, the Board of Pharmacy
14 issued Citation Number CI 2012 56022 against Respondent and ordered her to pay a fine in the
15 amount of \$800.00. The Citation resulted from Respondent's 2013 conviction for violating
16 Vehicle Code section 23152(b) (driving with blood alcohol level in excess of .08%). That
17 Citation is now final and is incorporated by reference as if fully set forth.

18 PRAYER

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

21 1. Revoking or suspending Pharmacy Technician Registration Number TCH 124537,
22 issued to Alyssa Michelle Hamlin;

23 2. Ordering Alyssa Michelle Hamlin to pay the Board of Pharmacy the reasonable costs
24 of the investigation and enforcement of this case, pursuant to Business and Professions Code
25 section 125.3;

26 ///

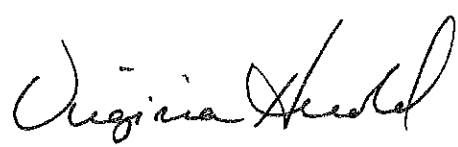
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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/8/16



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

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