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

In the Matter of the Accusation Against:

JESSE NUNEZ
445 N. Fresno Street
Los Angeles, CA 90063
Pharmacy Technician License No. TCH-74636

Respondent.

Case No. 3355

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 25, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3355 against Jesse Nunez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about April 16, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH-74636 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, unless renewed.

3. On or about April 23, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3355, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 136
2 and/or agency specific statute or regulation, is required to be reported and maintained with the
3 Board, which was and is:

4 445 N. Fresno Street
5 Los Angeles, CA 90063.

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

9 5. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 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.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
15 No. 3355.

16 7. California Government Code section 11520 states, in pertinent part:

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
23 as well as taking official notice of all the investigatory reports, exhibits and statements contained
24 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3355,
25 finds that the charges and allegations in Accusation No. 3355, are separately and severally true
26 and correct by clear and convincing evidence.

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1 9. 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 \$2,013.75 as of January 6, 2011.

4 **DETERMINATION OF ISSUES**

- 5 1. Based on the foregoing findings of fact, Respondent Jesse Nunez has subjected his
6 Pharmacy Technician License No. TCH-74636 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 License based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Investigatory Evidence Packet in this case.:

- 11 a. Business and Professions Code section 4301(l) – Conviction of Substantially Related
12 Crime.
- 13 b. Business and Professions Code section 4301(h) – Dangerous Use of Alcohol
- 14 c. Business and Professions Code section 4301(j) – Unlawful Possession of Marijuana

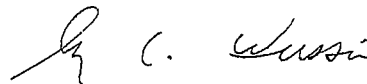
15 **ORDER**

16 IT IS SO ORDERED that Pharmacy Technician License No. TCH-74636, heretofore issued
17 to Respondent Jesse Nunez, is revoked.

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

22 This Decision shall become effective on April 15, 2011.

23 It is so ORDERED March 16, 2011.

24 

25 _____
26 STANLEY C. WEISSER, BOARD PRESIDENT
27 FOR THE BOARD OF PHARMACY
28 DEPARTMENT OF CONSUMER AFFAIRS

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DOJ Matter ID:LA2009603005
Attachment: Exhibit A: Accusation

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Exhibit A

Accusation

1 EDMUND G. BROWN JR.
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 BRIAN G. WALSH
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2535
6 Facsimile: (213) 897-2804
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 3355

12 **JESSE NUNEZ**
445 N. Fresno Street
13 Los Angeles, California 90063

A C C U S A T I O N

14 Pharmacy Technician License No. TCH-74636

15 Respondent.

16
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 April 16, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License Number TCH-74636 to Jesse Nunez (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein
25 and will expire on February 28, 2011, unless renewed.

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1 JURISDICTION

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

4 STATUTORY PROVISIONS

5 4. Section 118, subdivision (b), provides that the
6 suspension/expiration/surrender/cancellation of a license shall not deprive the
7 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated.

9 5. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
10 license issued by the Board.

11 6. Section 4301 states:

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

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

15

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

21

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

24

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

1 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
2 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
3 The board may inquire into the circumstances surrounding the commission of the crime, in order
4 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
5 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
6 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
7 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
8 of this provision. The board may take action when the time for appeal has elapsed, or the
9 judgment of conviction has been affirmed on appeal or when an order granting probation is made
10 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
11 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
12 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
13 indictment.”

14 REGULATORY PROVISIONS

15 7. California Code of Regulations, title 16, section 1770, states:

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

22 CONTROLLED SUBSTANCE CLASSIFICATION

23 8. Marijuana is a Schedule I controlled substance as defined in Health and Safety Code
24 section 11054, subdivision (d)(13).

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 **(Conviction of Substantially-Related Crime)**

5 10. Respondent is subject to disciplinary action under section 4301, subdivision (l), as a
6 result of Respondent's conviction of a crime that is substantially related to the qualifications,
7 functions, and duties of a licensed pharmacy technician. On or about September 3, 2008, after
8 pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating
9 Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater
10 than .08%] in the criminal proceeding entitled *The People of the State of California v. Jesse*
11 *Nunez* (Super. Ct. Los Angeles County, 2008, No. 8EA08980). Respondent was placed on three
12 years probation and ordered to complete a three-month first-offender drug and alcohol education
13 and counseling program. The underlying factual circumstances occurred on or about August 4,
14 2008, when Respondent was arrested by officers of the City of Vernon Police Department after
15 exhibiting objective signs of intoxication during a traffic stop.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol)**

18 11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
19 that Respondent used alcohol in a manner dangerous to himself and others, as follows:

20 a. Respondent used alcohol in a manner dangerous to himself and others when he
21 drove with a blood-alcohol content level greater than .08% on or about August 4, 2008.

22 Complainant refers to and incorporates all the allegations contained in paragraph 10, as though set
23 forth fully.

24 b. Respondent used alcohol in a manner dangerous to himself and others on or
25 about May 3, 2009, when officers of the County of Los Angeles Sheriff's Department arrested
26 Respondent after observing him swaying back and forth on the sidewalk, and stumbling as he
27

1 tried to walk.¹ During a booking search, Respondent was also found to be in possession of a
2 small amount of marijuana. He was charged with one misdemeanor count of violating Penal
3 Code section 647, subdivision (f) [disorderly conduct], and one misdemeanor count of violating
4 Health and Safety Code section 11357, subdivision (b) [possession of less than one ounce of
5 marijuana].

6 **THIRD CAUSE FOR DISCIPLINE**

7 **(Unlawful Possession of Marijuana)**

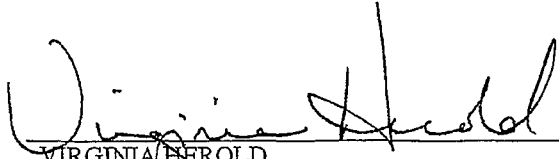
8 12. Respondent is subject to disciplinary action under section 4301, subdivision (j)
9 [violation of a statute regulating controlled substances], for violating Health and Safety Code
10 section 11357, subdivision (b) [possession of less than one ounce of marijuana] on or about
11 May 3, 2009. Complainant refers to and incorporates all the allegations contained in
12 paragraph 12, subparagraph b, as through set forth fully.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician License Number TCH-74636, issued
17 to Respondent;
- 18 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
19 enforcement of this case, pursuant to section 125.3; and
- 20 3. Taking such other and further action as deemed necessary and proper.

21
22 DATED: 1/25/10


23 VIRGINIA FEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 Complainant

1 An official inquiry has been made with the Superior Court of California, County of
Los Angeles, to determine whether criminal charges have been filed as a result of this arrest.