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

In the Matter of the Accusation Against:

ANGELA MARIE SIMMONS
2601 Jefferson Street #608
Carlsbad, CA 92008

**Pharmacy Technician Registration No. TCH
59251**

Respondent.

Case No. 3461

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 8, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3461 against Angela Marie Simmons (Respondent) before the Board of Pharmacy.

2. On or about October 22, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 59251 to Respondent. The Pharmacy Technician registration was in full force and effect at all times relevant to the charges brought herein and will expire on August 21, 2010, unless renewed.

3. On or about December 22, 2009, Rosita Donovan, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3461, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 2601 Jefferson Street #608, Carlsbad, CA 92008.

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1 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

2 4. On or about December 28, 2009, the aforementioned documents were returned by the
3 U.S. Postal Service marked "Addressee Unknown."

4 5. On or about December 29, 2009, Rosita Donovan, an employee of the Department of
5 Justice, served by First Class Mail a copy of the documents described in paragraph 3 to
6 Respondent using her alias "Angela Marie Parras" to Respondent's address of record with the
7 Board, which was and is 2601 Jefferson Street #608, Carlsbad, CA 92008.

8 6. On or about January 8, 2010, the aforementioned documents were returned by the
9 U.S. Postal Service marked "Unclaimed."

10 7. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c).

12 8. Government Code section 11506 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 parts
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 9. 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. 3461.

20 10. 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 the
22 hearing, the agency may take action based upon the respondent's express admissions
23 or upon other evidence and affidavits may be used as evidence without any notice to
24 respondent.

25 11. 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 evidence on file herein, finds that the allegations in Accusation No. 3461 are true.

28 12. The total cost for investigation and enforcement in connection with the Accusation is
\$1,997.50 as of January 20, 2010.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Angela Marie Simmons has
3 subjected her Pharmacy Technician Registration No. TCH 59251 to discipline.

4 2. A copy of the Accusation is attached.

5 3. The agency has jurisdiction to adjudicate this case by default.

6 4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
7 Registration based upon the following violations alleged in the Accusation:

8 a. Conviction of a crime that is substantially related to the qualifications, functions and
9 duties of a pharmacy technician in violation of Business and Professions Code section 4301,
10 subdivision (l) – driving under the influence of alcohol;

11 b. Unprofessional conduct in the use of an alcoholic beverage in violation of Business
12 and Professions Code section 4301, subdivision (h);

13 c. Conviction of a crime that is substantially related to the qualifications, functions and
14 duties of a pharmacy technician in violation of Business and Professions Code section 4301,
15 subdivision (l) – public intoxication;

16 d. Conviction of a crime that is substantially related to the qualifications, functions and
17 duties of a pharmacy technician in violation of Business and Professions Code section 4301,
18 subdivision (l) – driving with a suspended license;

19 e. Conviction of a crime that is substantially related to the qualifications, functions and
20 duties of a pharmacy technician in violation of Business and Professions Code section 4301,
21 subdivision (l) – driving without a valid driver's license; and,

22 f. Unprofessional conduct for conviction of more than one misdemeanor involving the
23 use or consumption of an alcoholic beverage under Business and Professions Code section 4301,
24 subdivision (k).

25 ORDER

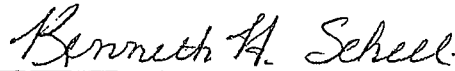
26 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 59251, heretofore
27 issued to Respondent Angela Marie Simmons, is revoked.

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

5 This decision shall become effective on April 29, 2010.

6 It is so ORDERED on March 30, 2010.

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KENNETH H. SCHELL, BOARD PRESIDENT
9 FOR THE BOARD OF PHARMACY
10 DEPARTMENT OF CONSUMER AFFAIRS

11 80421967.DOC
12 DOJ docket number:SD2009804736

13 Exhibit A: Accusation No. 3461
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Exhibit A
Accusation No. 3461

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 MARICHELE S. TAHIMIC
Deputy Attorney General
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6 San Diego, CA 92186-5266
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3461

12 **ANGELA MARIE SIMMONS**
13 **a ka ANGELA MARIE PARRA**
2601 Jefferson Street #608
14 Carlsbad, CA 92008

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH**
16 **59251**

17 Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about October 22, 2004, the Board of Pharmacy issued Pharmacy Technician
24 license Number TCH 59251 to Angela Marie Simmons aka Angela Marie Parra (Respondent).
25 The Pharmacy Technician license was in full force and effect at all times relevant to the charges
26 brought herein and will expire on August 21, 2010, unless renewed.

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

9 "...."

10 7. Section 490 of the Code states:

11 "(a) In addition to any other action that a board is permitted to take against a licensee, a
12 board may suspend or revoke a license on the ground that the licensee has been convicted of a
13 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
14 or profession for which the license was issued.

15 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
16 discipline a licensee for conviction of a crime that is independent of the authority granted under
17 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
18 of the business or profession for which the licensee's license was issued.

19 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
23 made suspending the imposition of sentence, irrespective of a subsequent order under the
24 provisions of Section 1203.4 of the Penal Code.

25 "(d) The Legislature hereby finds and declares that the application of this section has been
26 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
27 554, and that the holding in that case has placed a significant number of statutes and regulations
28 in question, resulting in potential harm to the consumers of California from licensees who have

1 been convicted of crimes. Therefore, the Legislature finds and declares that this section
2 establishes an independent basis for a board to impose discipline upon a licensee, and that the
3 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
4 constitute a change to, but rather are declaratory of, existing law."

5 8. Section 493 of the Code states:

6 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
7 the department pursuant to law to deny an application for a license or to suspend or revoke a
8 license or otherwise take disciplinary action against a person who holds a license, upon the
9 ground that the applicant or the licensee has been convicted of a crime substantially related to the
10 qualifications, functions, and duties of the licensee in question, the record of conviction of the
11 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
12 and the board may inquire into the circumstances surrounding the commission of the crime in
13 order to fix the degree of discipline or to determine if the conviction is substantially related to the
14 qualifications, functions, and duties of the licensee in question.

15 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
16 'registration.'"

17 9. California Code of Regulations, title 16, section 1770, states:

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

24 10. Section 482 of the Code states:

25 "Each board under the provisions of this code shall develop criteria to evaluate the
26 rehabilitation of a person when:

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

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

1 "Each board shall take into account all competent evidence of rehabilitation furnished by
2 the applicant or licensee."

3 11. Title 16, Code of Regulations, section 1769 provides in part:

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

8 "(1) Nature and severity of the act(s) or offense(s).

9 "(2) Total criminal record.

10 "(3) The time that has elapsed since commission of the act(s) or offense(s).

11 "(4) Whether the licensee has complied with all terms of parole, probation, restitution
12 or any other sanctions lawfully imposed against the licensee.

13 "(5) Evidence, if any, of rehabilitation submitted by the licensee."

14 COST RECOVERY

15 12. Section 125.3 of the Code states, in pertinent part, that the Board may request the
16 administrative law judge to direct a licensee found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case.

19 FIRST CAUSE FOR DISCIPLINE

20 (March 22, 2007 Conviction for DUI on February 3, 2007)

21 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (I),
22 for conviction of a crime substantially related to the qualifications, functions and duties of a
23 pharmacy technician in that on March 22, 2007, in *The People of the State of California v. Angela*
24 *Marie Parra*, San Diego Superior Court-North County Division, Case No. CN225671,
25 Respondent was convicted on her plea of guilty of driving under the influence of alcohol with a
26 blood alcohol content of 0.08% or greater, a violation of Vehicle Code section 23152(b).

27 14. The circumstances are as follows. At about 1:50 a.m. on February 3, 2007, an officer
28 of the Carlsbad Police Department observed Respondent's vehicle pass through a red traffic light

1 without stopping. The officer turned on his red and blue lights, followed Respondent's vehicle
2 and made a traffic stop. When the officer contacted Respondent, the officer smelled the odor of
3 an alcoholic beverage on Respondent's breath. In addition, Respondent's eyes were red, watery
4 and didn't focus and her speech was slurred. An open 350 ml bottle of Jack Daniels was
5 observed in a bag in the back seat of Respondent's vehicle. It was about 7/8 full of what
6 appeared, and smelled, like whiskey. Respondent was arrested after she failed the field sobriety
7 tests. She agreed to submit to breath tests at the detention facility. The breath tests resulted in
8 readings of 0.21% and 0.23% blood alcohol content. Respondent was charged with violation of
9 Vehicle Code sections 23152(a) and 23152(b) with a special allegation that Respondent was
10 driving under the influence of alcohol with a blood alcohol concentration of 0.15% or more
11 within the meaning of Vehicle Code section 23578. Respondent pled guilty to violation of
12 Vehicle Code section 23152(b) and admitted the special allegation. All other charges were
13 dismissed.

14 15. Respondent was sentenced to summary probation for 5 years, ordered to pay fines and
15 fees of \$1775, complete 10 days of community service, attend and complete a First Conviction
16 Program, attend MADD meetings and Respondent was prohibited from driving with a measurable
17 amount of alcohol in her system.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct-Use of Alcoholic Beverage on February 3, 2007)**

20 16. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
21 for unprofessional conduct on February 3, 2007 in that Respondent used an alcoholic beverage in
22 a manner as to be dangerous or injurious to herself or the public when Respondent operated a
23 motor vehicle while under the influence of alcohol with a blood alcohol concentration of greater
24 than .015% and when she ran a red traffic light, as more fully set forth in paragraphs 13 and 14,
25 above.

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1 THIRD CAUSE FOR DISCIPLINE

2 (July 9, 2007 Conviction of Public Intoxication on May 28, 2007)

3 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
4 for conviction of a crime substantially related to the qualifications, functions and duties of a
5 pharmacy technician in that on July 9, 2007, in *The People of the State of California v. Angela*
6 *Marie Parra*, San Diego Superior Court-North County Division, Case No. CN230976,
7 Respondent was convicted on her guilty plea of public intoxication, a violation of Penal Code
8 section 647(f).

9 18. The circumstances are as follows. At approximately 10:30 p.m. on May 28, 2007, an
10 officer of the Oceanside Police Department was patrolling the beach in Oceanside, California,
11 when he observed a group of people with alcohol on the beach, a violation of the Oceanside City
12 Code. After exiting the patrol car, the officer approached the group. In doing so, the officer
13 observed that the group was drinking what appeared to be beer from red plastic cups. The officer
14 told the group to discard the alcoholic beverages as they were not allowed on the beach, but
15 Respondent did not comply. When the officer asked Respondent why she did not discard her
16 drink, Respondent looked away from the officer and did not respond. The officer asked
17 Respondent to go to the patrol car. At this point, Respondent discarded her drink and went to the
18 patrol car.

19 19. When the officer attempted to issue Respondent a citation for having alcohol on the
20 beach, she was uncooperative and refused to give the officer information necessary for the
21 citation. The officer also observed that Respondent had watery, bloodshot eyes, slurred speech
22 and smelled of an alcoholic beverage. Once the citation was complete, Respondent refused to
23 sign it although she was advised that signing it was not an admission of guilt and was warned that
24 she would be taken into custody if she refused. Respondent continued to refuse to sign the
25 citation. She admitted she had a lot to drink that night but that everyone in the group was also
26 drinking and she should not be the only one getting a ticket. As the officer was attempting to take
27 Respondent into custody, she locked her arms at her sides and did not allow the officer to place
28 her in handcuffs. Respondent continued to resist arrest so the officer pinned her down, but

1 Respondent slipped away from the officer's grasp and fell, hitting her head on the bumper of the
2 patrol car. She did not suffer any injuries nor require medical treatment. She was eventually
3 taken into custody. While in custody, Respondent told the officer that she would end the officer's
4 career and that the officer should "wait for tomorrow" because he "had no idea what was
5 coming." When asked about her tattoos for booking purposes, Respondent told the officer that
6 she had a tattoo on her "a—of [the officer's] mom".

7 20. Respondent was charged with public intoxication, a violation of Penal Code section
8 647(f) and resisting an officer, a violation of Penal Code section 148(a)(1). Respondent pled
9 guilty to public intoxication and the remaining charge was dismissed.

10 21. Respondent was sentenced to summary probation for 3 years, required to pay fines
11 and fees of \$195, required to attend AA meetings, and ordered to abstain from alcohol in public.

12 FOURTH CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Use of Alcoholic Beverage on May 28, 2007)

14 22. Respondent is subject to disciplinary action under Code section 4301, subdivision (h),
15 for unprofessional conduct on May 28, 2007 in that Respondent used an alcoholic beverage in a
16 manner as to be dangerous or injurious to herself or the public when Respondent was intoxicated
17 in public and resisted arrest, as more fully set forth in paragraphs 17-19, above.

18 FIFTH CAUSE FOR DISCIPLINE

19 (January 9, 2008 Conviction-Driving Under a Suspended License on November 18, 2007)

20 23. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
21 for conviction of a crime substantially related to the qualifications, functions and duties of a
22 pharmacy technician in that on January 9, 2008, in *The People of the State of California v. Angela*
23 *Marie Parra*, San Diego Superior Court-North County Division, Case No. CN238076,
24 Respondent was convicted on her guilty plea of driving under a suspended license, a violation of
25 Vehicle Code section 14601.2(a).

26 24. The circumstances are as follows. On November 18, 2007, an officer of the Carlsbad
27 Police Department stopped Respondent because her license plate light was not functioning.

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1 During the course of the traffic stop, the officer learned that Respondent's driver's license was
2 suspended. The officer issued Respondent a citation and her vehicle was towed.

3 25. Respondent was charged with driving when her driving privilege was suspended and
4 revoked for driving under the influence of alcohol in violation of Vehicle Code section
5 14601.2(a) and unlawfully failing to have required lighting equipment in good working order on a
6 vehicle in violation of Vehicle Code section 24252(a). Respondent pled guilty to a reduced
7 charge of driving under a suspended license, Vehicle Code section 14601.1(a). The remaining
8 charges were dismissed.

9 26. Respondent was sentenced to 3 years probation and ordered to pay fines and fees of
10 \$1,251.

11 SIXTH CAUSE FOR DISCIPLINE

12 (July 21, 2008 Conviction-Driving Without a Valid License on April 29, 2008)

13 27. Respondent is subject to disciplinary action under Code section 4301, subdivision (l),
14 for conviction of a crime substantially related to the qualifications, functions and duties of a
15 pharmacy technician in that on July 21, 2008, in *The People of the State of California v. Angela*
16 *Marie Parra*, San Diego Superior Court-North County Division, Case No. CN245411,
17 Respondent was convicted on her guilty plea of driving without a valid license, a violation of
18 Vehicle Code section 12500(a).

19 28. The circumstances are as follows. On July 21, 2008, an officer of the Carlsbad Police
20 Department stopped Respondent for having tinted windows in violation of Vehicle Code section
21 26708. During the course of the traffic stop, the officer learned that Respondent's driver's license
22 was suspended. Respondent was cited and her vehicle was towed.

23 29. Respondent was charged with driving when her driving privilege was suspended and
24 revoked for driving under the influence of alcohol in violation of Vehicle Code section
25 14601.2(a). She pled guilty to driving without a valid driver's license, a violation of Vehicle
26 Code section 12500(a), and the remaining charge was dismissed.

27 30. Respondent was sentenced to 3 years probation and ordered to pay fines and fees of
28 \$454.

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SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Multiple Misdemeanors Involving Alcohol)

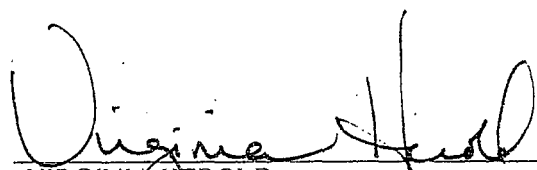
31. Respondent is subject to disciplinary action under Code section 4301, subdivision (k), for unprofessional conduct in the conviction of more than one misdemeanor involving the use or consumption of an alcoholic beverage in that Respondent was convicted of DUI on March 22, 2007 and of public intoxication on July 9, 2007, as more fully set forth in paragraphs 13-15 and 17-21, above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Number TCH 59251, issued to Angela Marie Simmons.
2. Ordering Angela Marie Simmons to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/8/09


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

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