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

In the Matter of the Accusation Against:

Case No. 3748

**GARY PATRICK GWIN  
1715 Ascot Ave.,  
Sacramento, CA 95673  
Pharmacy Technician Registration No. TCH  
92152**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about November 17, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3748 against Gary Patrick Gwin (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 7, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 92152 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 April 30, 2011, unless renewed.

3. On or about November 22, 2010, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3748, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
2 section 136 and/or agency specific statute or regulation, is required to be reported and maintained  
3 with the Board, which was and is:

4 1715 Ascot Ave.,  
5 Sacramento, CA 95673.

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 section  
8 124.

9 5. On or about December 13, 2010, the aforementioned documents were returned by the  
10 U.S. Postal Service marked "Unclaimed."

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
19 3748.

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

21 (a) If the respondent either fails to file a notice of defense or to appear at 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 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. 3748, finds that  
the charges and allegations in Accusation No. 3748, 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 \$382.50 as of January 10, 2011.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Gary Patrick Gwin has subjected  
6 his Pharmacy Technician Registration No. TCH 92152 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 Investigatory Evidence Packet in this case.:

11 a. Respondent is subject to disciplinary action under section 4301(l) in that on April 6,  
12 2010 he has been convicted of crimes which are substantially related to the qualifications,  
13 functions, and duties of a pharmacy technician by his plea of guilty to two counts of Penal Code  
14 section 288(a) (Felonies) (Committing lewd and lascivious acts with a 12 year old child) in the  
15 case of *People of the State of California vs. Gary Patrick Gwin*, Sacramento County Superior  
16 Court Case No. 09F07447.

17 The circumstances are as follows:

18 b. On or about October 2, 2009, after arranging to meet the 12 year old victim over the  
19 internet, respondent drove to victim's house and placed his penis and finger on/in victim's vagina  
20 while in his car.

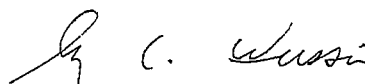
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 92152, heretofore issued to Respondent Gary Patrick Gwin, 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 on April 15, 2011.

It is so ORDERED March 16, 2011.



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STANLEY C. WEISSER, BOARD PRESIDENT  
FOR THE BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS

default decision\_LIC.rtf  
DOJ Matter ID:SA2010102496

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 KENT D. HARRIS  
Deputy Attorney General  
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Sacramento, CA 94244-2550  
6 Telephone: (916) 324-7859  
Facsimile: (916) 327-8643  
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:  
12 **GARY PATRICK GWIN**  
13 **1715 Ascot Ave.,**  
**Sacramento, CA 95673**  
14 **Pharmacy Technician Registration No. TCH**  
**92152**  
15 Respondent.

Case No. 3748

**ACCUSATION**

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
21 2. On or about July 7, 2009, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 92152 to Gary Patrick Gwin (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on April 30, 2011, unless renewed.

25 **JURISDICTION**

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

1           4.     Section 4300 of the Code states in pertinent part:

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

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

6           "(1) Suspending judgment.

7           "(2) Placing him or her upon probation.

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

9           "(4) Revoking his or her license.

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

12          ...

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

18          5.     Section 4301 of the Code states in pertinent part:

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

22          ...

23          "(1) The conviction of a crime substantially related to the qualifications, functions, and  
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
26 substances or of a violation of the statutes of this state regulating controlled substances or  
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

12 ...”

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

#### 17 CAUSE FOR DISCIPLINE

#### 18 (Conviction of Crimes)

19 7. Respondent is subject to disciplinary action under section 4301(l) in that on April 6,  
20 2010 he has been convicted of crimes which are substantially related to the qualifications,  
21 functions, and duties of a pharmacy technician by his plea of guilty to two counts of Penal Code  
22 section 288(a) (Felonies) (Committing lewd and lascivious acts with a 12 year old child) in the  
23 case of *People of the State of California vs. Gary Patrick Gwin*, Sacramento County Superior  
24 Court Case No. 09F07447.

25 The circumstances are as follows:

26 8. On or about October 2, 2009, after arranging to meet the 12 year old victim over the  
27 internet, respondent drove to victim's house and placed his penis and finger on/in victim's vagina  
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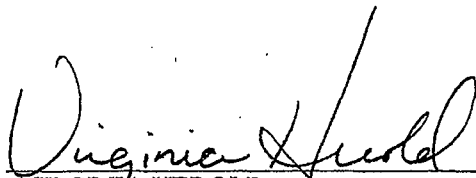


PRAYER

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 Registration Number TCH 92152, issued to Gary Patrick Gwin
2. Ordering Gary Patrick Gwin 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: 11/17/10



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

SA2010102496  
accusation.rtf