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5 **BEFORE THE**  
6 **BOARD OF PHARMACY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
7 **STATE OF CALIFORNIA**

8 In the Matter of the Accusation Against:

Case No. 3780

9 **EDUARDO PACHUGEUNO RIVERA**  
10 **4613 Alden Ct.**  
11 **Bakersfield, CA 93311**  
12 **Pharmacy Technician License No. TCH**  
13 **70498**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

14 FINDINGS OF FACT

15 1. On or about May 5, 2011, Complainant Virginia Herold, in her official capacity as the  
16 Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation  
17 No. 3780 against Eduardo Pachugeuno Rivera (Respondent) before the Board of Pharmacy.  
18 (Accusation attached as Exhibit A.)

19 2. On or about July 15, 2006, the Board of Pharmacy (Board) issued Pharmacy  
20 Technician License No. TCH 70498 to Respondent. The Pharmacy Technician License was in  
21 full force and effect at all times relevant to the charges brought herein and will expire on  
22 November 30, 2011, unless renewed.

23 3. On or about April 18, 2011, Respondent was served by Certified and First Class Mail  
24 copies of the Accusation No. 3780, Statement to Respondent, Notice of Defense, Request for  
25 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
26 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
27 is required to be reported and maintained with the Board, which was and is 4613 Alden Ct.,  
28 Bakersfield, CA 93311.

1           4.     Service of the Accusation was effective as a matter of law under the provisions of  
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
3 124.

4           5.     On or about May 4, 2011, the aforementioned documents were received at the address  
5 of record. A copy of the Domestic Return Receipt is attached as exhibit B, and is incorporated  
6 herein by reference

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

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

13           7.     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 No.  
15 3780.

16           8.     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  
20 respondent.

21           9.     Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
25 file at the Board's offices regarding the allegations contained in Accusation No. 3780, finds that  
26 the charges and allegations in Accusation No. 3780, are separately and severally, found to be true  
27 and correct by clear and convincing evidence.

28           10.    Taking official notice of its own internal records, pursuant to Business and  
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
and Enforcement is \$4,212.50 as of May 19, 2011.

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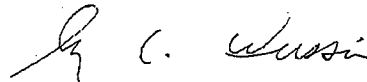
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 70498, heretofore issued to Respondent Eduardo Pachugeuno Rivera, 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 September 15, 2011.

It is so ORDERED August 16, 2011.



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

60629227.DOC  
DOJ Matter ID:LA2010600652

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
3 MICHAEL BROWN  
Deputy Attorney General  
4 State Bar No. 231237  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2095  
6 Facsimile: (213) 897-2804  
E-mail: MichaelB.Brown@doj.ca.gov  
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. 3780

12 **EDUARDO RIVERA**  
a.k.a., **EDUARDO RIVERA**  
13 **PACHUQUENO**  
a.k.a., **EDUARDO PACHUGUENO**  
14 4613 Alden Ct.  
Bakersfield, CA 93311

**A C C U S A T I O N**

15 Pharmacy Technician License  
16 No. TCH 70498

17 Respondent.

18  
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 July 15, 2006, the Board of Pharmacy (Board) issued Pharmacy  
24 Technician License No. TCH 70498 to Eduardo Rivera, also known as Eduardo Rivera  
25 Pachuqueno, and Eduardo Pachugueno (Respondent). The Pharmacy Technician License was in  
26 full force and effect at all times relevant to the charges brought herein and will expire on

27 November 30, 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 suspension, expiration, surrender or  
6 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary  
7 action during the period within which the license may be renewed, restored, reissued or  
8 reinstated.

9 5. Section 490 states, in pertinent part:

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

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

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

24 6. Section 4300 provides, in pertinent part, that every license issued by the Board is  
25 subject to discipline, including suspension or revocation.

26 7. Section 4301 states, in pertinent part:

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

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

2 . . . .

3 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
4 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
5 whether the act is a felony or misdemeanor or not.

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 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
14 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
15 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
16 substances or of a violation of the statutes of this state regulating controlled substances or  
17 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
18 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
19 The board may inquire into the circumstances surrounding the commission of the crime, in order  
20 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
21 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
22 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
23 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
24 of this provision. The board may take action when the time for appeal has elapsed, or the  
25 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
26 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
27 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
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1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
2 indictment.”

3 **REGULATORY PROVISIONS**

4 6. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

11 **COST RECOVERY**

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Convictions of Substantially Related Crimes)**

18 8. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
19 490, in conjunction of California Code of Regulations, title 16, section 1770, in that Respondent  
20 was convicted of crimes substantially related to the qualifications, functions or duties of a  
21 licensed pharmacy technician, as follows:

22 a. On or about May 7, 2010, after pleading nolo contendere, Respondent was convicted  
23 of one misdemeanor count of violating Penal Code section 245, subdivision (a)(1) [battery] in the  
24 criminal proceeding entitled *The People of the State of California v. Eduardo Rivera Pachuqueno*  
25 (Super. Ct. Kern County, 2010, No. BM763354A). The Court sentenced Respondent to 45 days  
26 in Kern County Jail and placed him on probation for a period of 3 years, with terms and

27 conditions. The circumstances surrounding the conviction are that on or about

28 ///

1 December 21, 2009, Respondent assaulted another with a deadly weapon, to wit: a beer bottle.

2 b. On or about May 7, 2010, after pleading nolo contendere, Respondent was convicted  
3 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving  
4 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*  
5 *State of California v. Eduardo Rivera Pachuqueno* (Super. Ct. Kern County, 2010, No.  
6 BM767648A). The Court sentenced Respondent to 45 days in Kern County Jail and placed him  
7 on probation for a period of 3 years, with terms and conditions. The circumstances surrounding  
8 the conviction are that on or about March 20, 2010, during a traffic stop by the Bakersfield  
9 California Highway Patrol, Respondent was contacted. While speaking to Respondent the  
10 officers detected a strong odor of an alcoholic beverage emitting from within the vehicle. He was  
11 observed to have slurred speech, an unsteady gait, red watery eyes, and an odor of an alcoholic  
12 beverage emitting from his person. When asked if he had consumed any alcoholic beverages,  
13 Respondent indicated that he had not. He was subsequently arrested for violating Vehicle Code  
14 section 23152, subdivision (a) [driving under the influence of alcohol or drugs] and Vehicle Code  
15 section 23152, subdivision (b) [driving while having 0/08% and more, by weight, of alcohol in  
16 his blood]. During the booking procedure, Respondent submitted to a breath test that resulted in a  
17 blood-alcohol content level of 0.16%.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Dangerous Use of Alcohol)**

20 9. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
21 that on or about March 20, 2010, Respondent used alcoholic beverages to an extent or in a  
22 manner dangerous or injurious to himself, and the public, when he operated a vehicle while  
23 having 0.16% of alcohol in his blood. Complainant refers to, and by this reference incorporates,  
24 the allegations set forth above in paragraph 8, subparagraph (b), as though fully set forth.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Acts Involving Moral Turpitude)**

27 10. Respondent is subject to disciplinary action under section 4301, subdivision (f) in  
28 that on or about December 21, 2009, Respondent committed acts involving moral turpitude, when

1 he assaulted another with a deadly weapon. Complainant refers to, and by this reference  
2 incorporates, the allegations set forth above in paragraph 8, subparagraph (a), as though fully set  
3 forth.

4 **DISCIPLINARY CONSIDERATIONS**

5 11. To determine the degree of discipline, if any, to be imposed on Respondent,  
6 Complaint alleges the following:

7 a. On or about March 18, 2009, after pleading nolo contendere, Respondent was  
8 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
9 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*  
10 *the State of California v. Eduardo Rivera Pachuqueno* (Super. Ct. Kern County, 2010, No.  
11 BM747468A. The Court sentenced Respondent to two days in Kern County Jail and placed him  
12 on probation for a period of 3 years, with terms and conditions. The circumstances surrounding  
13 the conviction are that on or about February 22, 2009, during an investigation by the Bakersfield  
14 Police Department, Respondent was found passed out at an intersection, with the motor of his  
15 vehicle running. The officer turned off the ignition and shook Respondent awake. While  
16 speaking to the Respondent, the officer detected a strong odor of an alcoholic beverage emitting  
17 from within the vehicle. When asked if he had consumed any alcoholic beverages, Respondent  
18 admitted that he had two alcoholic beverages that evening. Respondent submitted to a breath test  
19 at the scene of the arrest that resulted in a blood-alcohol content level of 0.174%. Respondent  
20 was subsequently arrested for violating Vehicle Code section 23152, subdivision (a) [drinking  
21 under the influence of alcohol or drugs] and Vehicle Code section 23152, subdivision (b) [driving  
22 while having a blood-alcohol level of 0.08 and higher].

23 b. On or about December 16, 2009, the Board issued Respondent a notice of warning.

24 **PRAYER**

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

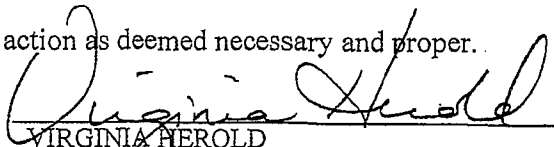
27 1. Revoking or suspending Pharmacy Technician License No. TCH 70498, issued to  
28 Respondent;

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2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 4/5/11



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

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