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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. 3793

12 **EDGARDO ERNESTO MUNOZ**
13 **525 Siesta Drive**
14 **Aptos, CA 95003**
Pharmacy Technician No. TCH 72067

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

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16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about November 2, 2010, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation
21 No. 3793 against Edgardo Ernesto Munoz (Respondent) before the California State Board of
22 Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about September 26, 2006, the California State Board of Pharmacy (Board)
24 issued Pharmacy Technician No. TCH 72067 to Respondent. The Pharmacy Technician was in
25 full force and effect at all times relevant to the charges brought in this Default Decision and Order
26 and will expire on December 31, 2011, unless renewed.

27 3. On or about November 30, 2010, Respondent was served by First Class Mail copies
28 of the Accusation No. 3793, Statement to Respondent, Notice of Defense, Request for Discovery,

1 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 136
3 and/or California Code of Regulations, Title 16, section 1704, is required to be reported and
4 maintained with the Board. At the time of service, Respondent's address of record was:

5 Edgardo Ernesto Munoz
6 525 Siesta Drive
7 Aptos, CA 95003

8 4. Government Code section 11506 states, in pertinent part:

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

14 5. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
16 No. 3793.

17 6. California Government Code section 11520 states, in pertinent part:

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

22 7. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
25 as well as taking official notice of all the investigatory reports, exhibits and statements contained
26 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3793,
27 finds that the charges and allegations in Accusation No. 3793, are separately and severally true
28 and correct by clear and convincing evidence.

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1 8. 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 \$1,955.00 as of December 29, 2010.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Edgardo Ernesto Munoz has
6 subjected his Pharmacy Technician No. TCH 72067 to discipline.

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

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

12 a. Sections 4301, subdivisions (h), (l), and (k) (Conviction of a crimes on or about July
13 2, 2008 and May 28, 2010).

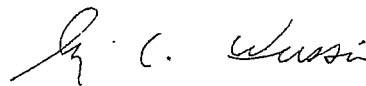
14 **ORDER**

15 IT IS SO ORDERED that Pharmacy Technician No. TCH 72067, heretofore issued to
16 Respondent Edgardo Ernesto Munoz, is revoked.

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

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

22 It is so ORDERED March 16, 2011.



23
24 **STANLEY C. WEISSER, BOARD PRESIDENT**
25 **FOR THE BOARD OF PHARMACY**
26 **DEPARTMENT OF CONSUMER AFFAIRS**

27 90173299.DOC
28 SF2010900365
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 EDMUND G. BROWN JR.
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10 **BEFORE THE**
BOARD OF PHARMACY
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11 **STATE OF CALIFORNIA**
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14 In the Matter of the Accusation Against:

Case No. 3793

15 **EDGARDO ERNESTO MUNOZ**
525 Siesta Drive
Aptos, CA 95003
16 Pharmacy Technician No. TCH 72067

A C C U S A T I O N

17 Respondent.
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20 Complainant alleges:

21 **PARTIES**

22 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
23 capacity as the Executive Officer of the Board of Pharmacy.

24 2. On or about September 26, 2006, the Board of Pharmacy issued Pharmacy Technician
25 Number TCH 72067 to Edgardo Ernesto Munoz (Respondent). The Pharmacy Technician was in
26 full force and effect at all times relevant to the charges brought in this Accusation and will expire
27 on December 31, 2011, unless renewed.

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JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY/REGULATORY PROVISIONS

5. Section 4301 of the Code states, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

12 ...

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

18 ...

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

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

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

11 6. Section 490 of the Code states:

12 “A Board may suspend or revoke a license on the ground that the licensee has been
13 convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties
14 of the business or profession for which the license was issued. A conviction within the meaning
15 of this section means a plea or verdict of guilty or a conviction following a plea of nolo
16 contendere. Any action which a Board is permitted to take following the establishment of a
17 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
18 been affirmed on appeal, or when an order granting probation is made suspending the imposition
19 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
20 Code.”

21 7. Title 16, California Code of Regulations, section 1770, states:

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

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COST RECOVERY

8. Section 125.3 of the Code states, 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.

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DRUGS

9. Percocet is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b)(1)(N) and a dangerous drug pursuant to Business and Professions Code section 4022. It is used to control moderate to severe pain.

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FIRST CAUSE FOR DISCIPLINE

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(Unprofessional Conduct-Conviction Substantially Related Conduct)

10. Respondent has subjected his license to discipline under sections 490 and 4301, subdivision (l) in that he was convicted of a crime substantially related to the qualifications, functions, and duties of his license. On or about July 2, 2008, Respondent was convicted by the court on his plea of guilty for a violation of Vehicle Code section 23103.5 (reckless driving involving alcohol) in Sonoma County Superior Court, Case No. SCR0540166, entitled *People v. Munoz, Edgardo Ernesto*. The circumstances of the crime that on or about June 11, 2008, Respondent unlawfully drove a vehicle while under the influence of alcohol and/or a drug.

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SECOND CAUSE FOR DISCIPLINE

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(Unprofessional Conduct – Use of Alcohol)

11. Paragraph 10 above, is incorporate by reference as if fully set forth.

12. Respondent has subjected his license to disciplinary action under section 4301, subdivision (h) in that on or about June 11, 2008, Respondent consumed alcohol, ingested a controlled substance and unlawfully drove a vehicle as set forth in paragraph 10, above.

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THIRD CAUSE FOR DISCIPLINE

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(Unprofessional Conduct-Conviction Substantially Related Crime)

13. Respondent has subjected his license to disciplinary action under sections 490 and 4301, subdivision (l) in that he was convicted of a crime substantially related to the qualifications,

1 functions, and duties of his license. On or about May 28, 2010, Respondent was convicted by the
2 court on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b)
3 (driving with .08% or more, by weight of alcohol in his blood) in Santa Cruz County Superior
4 Court, Case No. M52293, entitled *People v. Edgardo Ernesto Munoz*. The circumstances of the
5 crime are that on or about January 10, 2010, Respondent unlawfully and erratically drove a
6 vehicle, while he had .08% or more, by weight of alcohol in his blood, and with a prior conviction
7 as set forth in paragraph 10, above. Respondent admitted to consuming four beers and ingesting
8 five milligrams of Percocet prior to driving.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct-Prior Conviction)**

11 14. Paragraphs 10 and 13 above, are incorporated as if fully set forth.

12 15. Respondent has subjected his license to disciplinary action under sections 4301,
13 subdivision (k) based on the convictions described in paragraphs 10 and 13, above.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct- Use of Alcohol)**

16 16. Paragraph 13 above, is incorporated as if fully set forth.

17 17. Respondent has subjected his license to disciplinary action under section 4301,
18 subdivision (h) in that on or about January 10, 2010, Respondent consumed alcohol, ingested a
19 controlled substance and unlawfully drove a vehicle as set forth in paragraph 13, above.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Number TCH 72067; issued to
24 Edgardo Ernesto Munoz;

25 2. Ordering Edgardo Ernesto Munoz to pay the Board of Pharmacy the reasonable costs
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code
27 section 125.3;

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

DATED: 11/2/10

Virginia K. Herold
VIRGINIA K. HEROLD
Executive Officer
Board of Pharmacy
State of California
Complainant

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