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

In the Matter of the Accusation Against: **YAMINA GISSEL TERRAZAS** **1771 Cresthaven Way** **Pomona, CA 91766** **Pharmacy Technician Reg. No. TCH 83775** Respondent.	Case No. 3820 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 10, 2011, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 3820 against Yamina Gissel Terrazas (Respondent) before the Board. (Accusation attached as Exhibit A.)

2. On or about June 3, 2009, the Board issued Pharmacy Technician Registration No. TCH 83775 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3280 and will expire on March 31, 2011, unless renewed.

3. On or about March 28, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3820, Statement to Respondent, Notice of Defense, Request

for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board of Pharmacy, which was and is:

1771 Cresthaven Way
Pomona, CA 91766.

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

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

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

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3820.

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

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

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as 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. 3820, finds that the charges and allegations in Accusation No. 3820, are separately and severally, found to be true and correct by clear and convincing evidence.

9. 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 $5,617.50 as of August 26, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Yamina Gissel Terrazas has subjected her Pharmacy Technician Registration No. TCH 83775 to discipline.

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

3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Business and Professions Code section 490, on the grounds of unprofessional conduct, for conviction of crimes substantially related to the qualifications, functions, or duties of a Pharmacy Technician. Respondent suffered two separate DUI convictions in March and June of 2010.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 83775, heretofore issued to Respondent Yamina Gissel Terrazas, 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 December 21, 2011.

It is so ORDERED November 21, 2011.

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

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

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In the Matter of the Accusation Against: **YAMINA GISSEL TERRAZAS** **1771 Cresthaven Way** **Pomona, CA 91766** **Pharmacy Technician No. TCH 83775** Respondent.	Case No. 3820 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 3, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician No. TCH 83775 to Yamina Gissel Terrazas (Respondent). The Pharmacy Technician was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2011, unless renewed.

JURISDICTION

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

STATUTORY PROVISIONS

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

5. Section 490 states:

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

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

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

6. Section 4300 states that "[e]very license issued may be suspended or revoked."

7. Section 4301 states, in pertinent part:

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

. . . .

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

. . . .

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

. . . .

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

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

REGULATORY PROVISIONS

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

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

COST RECOVERY

9. Section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially-Related Crimes)

10. Respondent is subject to disciplinary action under section 490, in conjunction with California Code of Regulations, title 16, section 1770, and section 4301, subdivisions (k) and (l), in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician. Either one of the convictions is an independent reason for disciplinary action.

a. On or about June 21, 2010, after pleading *nolo contendere,* Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood]; one misdemeanor count of violating Vehicle Code section 14601.2 [driving when privilege suspended or revoked for driving under the influence of alcohol]; and one misdemeanor count of violating Vehicle Code section 23578 [excessive blood alcohol or refusal to take chemical testing: enhanced penalties], in the criminal proceeding *The People of the State of California v. Yamina Gissel Terrazas* (Super. Ct. Los Angeles County, 2010, No. OPK02789). The circumstances surrounding the conviction are that on or about April 22, 2010, a Pomona Police Officer was dispatched to investigate a non-injury traffic collision. The officer arrived and noticed a female sitting in the vehicle that was identified as the vehicle that had been in the traffic collision. The officer also noticed that the vehicle had collision damage to the front of the vehicle. The female sitting in the driver's seat of that vehicle was later identified as the Respondent. The officer immediately smelled a strong odor of alcohol emitting from Respondent's breath when asked to step out of the vehicle. Respondent admitted to drinking one beer prior to the collision. Respondent agreed to submit to a series of Field Sobriety Tests and performed poorly. Respondent was subsequently given two alcohol breath tests, with results of .19% BAC and .18% BAC. Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood]; Vehicle Code section 14601.2 [driving when privilege

suspended or revoked for driving under the influence of alcohol]; and Vehicle Code section 23578 [excessive blood alcohol or refusal to take chemical testing: enhanced penalties.]

b. On or about March 10, 2010, after pleading *Guilty,* Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood], in the criminal proceeding *The People of the State of California v. Yamina Gissel Terrazas* (Super. Ct. San Bernardino County, 2010, No. TCH1000039). The circumstances surrounding the conviction are that on or about November 14, 2009, a Chino Police Officer was on patrol and during a routine traffic stop, pulled Respondent over for quickly changing lanes without signaling. The officer also noticed that Respondent's vehicle stopped at the next traffic light and remained stop at a green light for approximately fifteen seconds. The officer immediately detected an odor of an alcoholic beverage emitting from the interior of the vehicle. Respondent was observed to have watery eyes, slurred speech, and a strong odor of an alcoholic beverage on her person. Respondent admitted to drinking half of a bottle of wine. During a search, the officer recovered a plastic baggie in Respondent's pants pocket containing the drug LSD. Respondent agreed to a series of Standardized Field Sobriety Tests and performed poorly. Respondent was subsequently given two alcohol breath tests, with results of .170% BAC and .174% BAC. Respondent was convicted of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in her blood.]

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

11. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that Respondent used an alcoholic beverage in a dangerous manner while driving a vehicle and being convicted of crimes. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) and (b), as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Convictions Involving the Consumption of Alcohol)

12. Respondent is subject to disciplinary action under section 4301, subdivision (k), in

that Respondent was convicted of crimes involving the consumption of alcohol. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) and (b), as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Dishonest Acts)

13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in that Respondent committed dishonest acts by driving a vehicle while under the influence of an alcoholic beverage. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) and (b), as though set forth fully.

PRAYER

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

1. Revoking or suspending Pharmacy Technician No. TCH 83775, issued to Yamina Gissel Terrazas;

2. Ordering Yamina Gissel Terrazas to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

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

DATED: 3/10/11

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

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