

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

In the Matter of the Accusation Against:

Case No. 3832

**ALEX MACDONALD**

3408 Cameo Drive  
Oceanside, CA 92056

Pharmacy Technician License No. TCH 86095

Respondent.

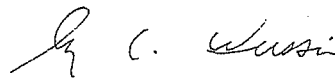
**DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 22, 2011.

It is so ORDERED May 23, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3832

12 **ALEX MACDONALD**  
13 **3408 Cameo Drive**  
14 **Oceanside, CA 92056**

**STIPULATED SURRENDER OF**  
**LICENSE AND ORDER**

15 **Pharmacy Technician Registration**  
**No. TCH 86095**

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this  
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
21 She brought this action solely in her official capacity and is represented in this matter by Kamala  
22 D. Harris, Attorney General of the State of California, by Amanda Dodds, Senior Legal Analyst.

23 2. Alex MacDonald (Respondent) is representing himself in this proceeding and has  
24 chosen not to exercise his right to be represented by counsel.

25 3. On or about September 2, 2008, the Board of Pharmacy issued Pharmacy Technician  
26 Registration No. TCH 86095 to Respondent. The Pharmacy Technician Registration was in full  
27 force and effect at all times relevant to the charges brought in Accusation No. 3832 and will  
28 expire on November 30, 2011, unless renewed.

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**JURISDICTION**

4. Accusation No. 3832 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 1, 2011. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3832 is attached as Exhibit A and incorporated by reference.

**ADVISEMENT AND WAIVERS**

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3832. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

**CULPABILITY**

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 3832, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 86095 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation, he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

**CONTINGENCY**

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may

1 communicate directly with the Board regarding this stipulation and surrender, without notice to or  
2 participation by Respondent. By signing the stipulation, Respondent understands and agrees that  
3 he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
4 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
5 the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this  
6 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
7 be disqualified from further action by having considered this matter.

8 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of  
9 License and Order, including facsimile signatures thereto, shall have the same force and effect as  
10 the originals.

11 12. This Stipulated Surrender of License and Order is intended by the parties to be an  
12 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
13 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
14 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order  
15 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing  
16 executed by an authorized representative of each of the parties.

17 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
18 the Board may, without further notice or formal proceeding, issue and enter the following Order:

19 **ORDER**

20 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 86095, issued  
21 to Respondent Alex MacDonald, is surrendered and accepted by the Board of Pharmacy.

22 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance  
23 of the surrendered license by the Board shall constitute the imposition of discipline against  
24 Respondent. This stipulation constitutes a record of discipline and shall become a part of  
25 Respondent's license history with the Board.

26 2. Respondent shall lose all rights and privileges as a Pharmacy Technician in California  
27 as of the effective date of the Board's Decision and Order.

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1 3. Respondent shall cause to be delivered to the Board his pocket license and, if one was  
2 issued, his wall certificate, within ten (10) days of the effective date of the effective date of the  
3 Decision and Order.

4 4. If Respondent ever applies for licensure or petitions for reinstatement in the State of  
5 California, the Board shall treat it as a new application for licensure. Respondent must comply  
6 with all the laws, regulations and procedures for licensure in effect at the time the application is  
7 filed, and all of the charges and allegations contained in Accusation No. 3832 shall be deemed to  
8 be true, correct and admitted by Respondent when the Board determines whether to grant or deny  
9 the application.


10 5. Respondent may not apply for any license, permit, or registration from the Board for  
11 three (3) years from the effective date of the Decision. Respondent shall satisfy all requirements  
12 applicable to that license as of the date the application is submitted to the Board, including, but  
13 not limited to certification by a nationally recognized body prior to the issuance of a new license.  
14 Respondent is required to report this surrender as disciplinary action.

15 6. In the event a new license is issued to Respondent, he shall pay to the Board costs  
16 associated with its investigation and enforcement pursuant to Business and Professions Code  
17 section 125.3 in the amount of \$745.00.

#### 18 ACCEPTANCE

19 I have carefully read the Stipulated Surrender of License and Order. I understand the  
20 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this  
21 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to  
22 be bound by the Decision and Order of the Board of Pharmacy.

23  
24 DATED: 3/19/2011

  
ALEX MACDONALD  
Respondent

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**ENDORSEMENT**

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 3/23/2011

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
LINDA K. SCHNEIDER  
Supervising Deputy Attorney General



AMANDA DODDS  
Senior Legal Analyst  
*Attorneys for Complainant*

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Exhibit A

Accusation No. 3832

1 EDMUND G. BROWN JR.  
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2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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10 **BOARD OF PHARMACY**  
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13 **ALEX MACDONALD**  
14 **3408 Cameo Drive**  
**Oceanside, CA 92056**

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

15 **Pharmacy Technician Registration**  
16 **No. TCH 86095**

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 September 2, 2008, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 86095 to Alex MacDonald (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on November 30, 2011, unless renewed.

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## JURISDICTION

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

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation 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.

5. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

## STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

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

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

8. Section 4301 of the Code states:

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:

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(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.

....

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

....

(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 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of 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. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

....

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

....

9. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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1 (b) Any device that bears the statement: "Caution: federal law restricts this  
2 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
3 import, the blank to be filled in with the designation of the practitioner licensed to use  
4 or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully  
dispensed only on prescription or furnished pursuant to Section 4006.

5 10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any  
6 dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist,  
7 veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any  
8 dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist,  
9 veterinarian, or naturopathic doctor pursuant to Section 3640.7.

#### 10 REGULATORY PROVISIONS

11 11. California Code of Regulations, title 16, section 1769, states:

12 .....

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

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

17 (2) Total criminal record.

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

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

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

22 12. California Code of Regulations, title 16, section 1770, states:

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

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1 COSTS

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

6 DRUG

7 14. Cocaine is a Schedule II controlled substance as designated by Health and Safety  
8 Code section 11055, subdivision (b)(6), and is a dangerous drug pursuant to Business &  
9 Professions Code section 4022.

10 FIRST CAUSE FOR DISCIPLINE

11 **(May 4, 2010 Criminal Conviction for DUI/Controlled Substance on April 29, 2010)**

12 15. Respondent has subjected his registration to discipline under sections 490 and 4301,  
13 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
14 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

15 a. On or about May 4, 2010, in a criminal proceeding entitled *People of the State*  
16 *of California v. Alexander MacDonald*, San Diego County Superior Court (North County  
17 Division), case number CN276309, Respondent was convicted on his plea of guilty to violating  
18 Vehicle Code section 23152, subdivision (a), driving under the influence of a controlled  
19 substance, to wit, cocaine, a misdemeanor.

20 b. As a result of the conviction, on or about May 4, 2010, Respondent was  
21 sentenced to serve five years summary probation, ordered to enroll in and attend a First  
22 Conviction Program and MADD victim impact panel, pay fines, fees, and restitution in the  
23 amount of \$1,952, and comply with standard alcohol conditions pursuant to Vehicle Code section  
24 23600 (which includes controlled substances).

25 c. The facts that led to the conviction were that on or about the evening of April  
26 29, 2010, an officer of the Oceanside Police Department driving a marked police vehicle  
27 observed Respondent drive through a parking lot at a high rate of speed, exit going in the wrong  
28 direction, then proceed onto a narrow two-lane roadway still driving at an unsafe speed.

1 Respondent was stopped by the officer and questioned. As Respondent was looking for his  
2 vehicle registration, the officer noticed a 3-inch cut straw covered in white residue in the door  
3 handle pocket of the vehicle. The officer retrieved the straw through the open window and  
4 showed it to Respondent, who denied knowing anything about it. Respondent appeared nervous  
5 and unable to sit still, he had rapid speech and dilated pupils. The officer conducted a search of  
6 Respondent's vehicle and located a small glass vial containing white residue and another snorting  
7 straw with white residue in the driver's side change compartment. Respondent finally admitted to  
8 the officer that he used to abuse Oxycontin but had gone into rehab and was on methadone and  
9 Alprazolam. Respondent said that he recently started snorting cocaine and directed the officer to  
10 other drug paraphernalia in the vehicle including a small piece of glass used for cutting up the  
11 cocaine, two additional plastic vials containing residue, a digital scale, two small used baggies, a  
12 plastic pill cutting device with residue, more snorting straws, and a ball of crumpled foil.  
13 Respondent said he formerly used to smoke "Oxy." Respondent agreed to submit to a series of  
14 field sobriety tests which showed impairment; Respondent's pulse was approximately 132 beats  
15 per minute, his pupils showed slow reaction to light, he had eyelid tremors, and a visible  
16 reddening of the interior right nostril. Respondent was placed under arrest for driving under the  
17 influence of a controlled substance, being under the influence of a controlled substance, and  
18 possession of controlled substance paraphernalia. A razor blade was found in Respondent's  
19 wallet during booking.

## 20 SECOND CAUSE FOR DISCIPLINE

### 21 (Unprofessional Conduct - Use of a Controlled Substance)

22 16. Respondent has subjected his registration to disciplinary action under section 4301,  
23 subdivision (h) of the Code in that on or about April 29, 2010, Respondent administered to  
24 himself a controlled substance, cocaine, as detailed in paragraph 15, above.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Violation of State Laws Regulating Controlled Substances)**

3 17. Respondent has subjected his registration to disciplinary action under section 4301,  
4 subdivision (j) of the Code in that on or about April 29, 2010, as detailed in paragraph 15, above,  
5 Respondent was under the influence of a controlled substance (cocaine), which violated Health  
6 and Safety Code section 11550, subdivision (a); and he possessed controlled substance  
7 paraphernalia, which violated Health and Safety Code section 11364.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Furnishing a Dangerous Drug)**

10 18. Respondent has subjected his registration to disciplinary action under sections 4301,  
11 subdivision (o) and 4059 of the Code in that on or about April 29, 2010, as detailed in paragraph  
12 15, above, Respondent furnished to himself and was under the influence of cocaine.

13 **PRAYER**

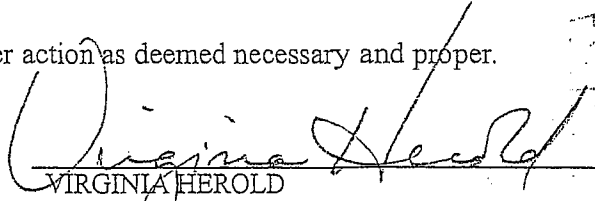
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 86095,  
17 issued to Alex MacDonald;

18 2. Ordering Alex MacDonald to pay the Board of Pharmacy the reasonable costs of the  
19 investigation and enforcement of this case, pursuant to Business and Professions Code section  
20 125.3;

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

22 DATED: 2/23/11

23   
24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
Complainant

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