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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. 3925

ALVARO ERNESTO MOLINA
6733 Lemp Avenue, #2
North Hollywood, CA 91606
Pharmacy Technician License No. TCH
66419

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about July 15, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3925 against Alvaro Ernesto Molina (“Respondent”) before the Board of Pharmacy.

2. On or about November 29, 2005, the Board of Pharmacy (“Board”) issued Pharmacy Technician License No. TCH 66419 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 3925 and expired on May 31, 2011. This lapse in licensure, however, pursuant to Business and Professions Code section 118(b), does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

1 3. On or about July 22, 2011, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 3925, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address on record with
6 the Board was and is:

7 **6733 Lemp Avenue, #2**
8 **North Hollywood, CA 91606.**

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

11 5. The aforementioned documents have not been returned by the U.S. Postal Service as
12 undelivered.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 3925.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 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. 3925, finds that

1 the charges and allegations in Accusation No. 3925, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,945.00 as of August 17, 2011.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Alvaro Ernesto Molina has
8 subjected his Pharmacy Technician License No. TCH 66419 to discipline.

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

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

13 4. **Substantially Related Criminal Convictions.** Respondent is subject to disciplinary
14 action under sections 4301, subdivision (l) and 490 of the Code, in conjunction with California
15 Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crimes which
16 are substantially related to the qualifications, functions, or duties of a pharmacy technician, as
17 follows:

18 a. On or about September 13, 2010, in the criminal matter entitled *The People of*
19 *the State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2010, No.
20 XNWLA06584101), Respondent was convicted of violating Penal Code section 594, subdivision
21 (a), vandalism, a felony. Respondent was placed on formal probation for a period of three years
22 and was ordered to serve two hundred and seventy days in jail. The basis for the conviction is that
23 on or about May 8, 2010, Respondent kicked in the front door of the residence of his former
24 girlfriend's house. Respondent further pulled out his former girlfriend's hair and spit on her.
25 Respondent punched and damaged the television and cell phone, and then fled the residence. On
26 or about August 16, 2010, Respondent admitted to police officers that he damaged his former
27 girlfriend's television and cell phone.

1 b. On or about November 28, 2007, in the criminal matter entitled *The People of*
2 *the State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2007, No.
3 BA327607), Respondent was convicted of violating Penal Code section 594, subdivision (a),
4 vandalism, a felony. Respondent was placed on formal probation for a period of three years and
5 was ordered to serve sixty days in jail, pay restitution to the victim, and not associate with gang
6 members. The basis for the conviction is that on or about August 15, 2007, Respondent and
7 another male were causing a disturbance in their neighborhood. A neighbor began videotaping
8 Respondent and the other male to record their disruptive behavior. When Respondent saw the
9 neighbor videotaping, he dragged the neighbor down a flight of stairs to the ground causing
10 physical injury. Respondent then grabbed the video camera, smashed it to the ground, and then
11 threw it around causing it to shatter into pieces.

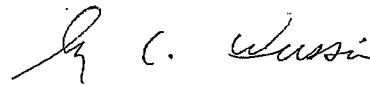
12 **ORDER**

13 IT IS SO ORDERED that Pharmacy Technician License No. TCH 66419, heretofore issued
14 to Respondent Alvaro Ernesto Molina, is revoked.

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

19 This Decision shall become effective on December 21, 2011.

20 It is so ORDERED November 21, 2011.

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

Exhibit A
Accusation No. 3925

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 RANDY M. MAILMAN
Deputy Attorney General
4 State Bar No. 246134
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2442
6 Facsimile: (213) 897-2804
Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:
11 **ALVARO ERNESTO MOLINA**
12 **6733 Lemp Avenue, #2**
13 **North Hollywood, CA 91606**
14 **Pharmacy Technician License No. TCH**
66419

Case No. 3925

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about November 29, 2005, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 66419 to Alvaro Ernesto Molina ("Respondent"). The Pharmacy
22 Technician License was in full force and effect at all times relevant to the charges brought herein
23 and will expire on May 31, 2011, unless renewed.

24 **JURISDICTION**

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

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STATUTORY PROVISIONS

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

6 5. Section 490 states:

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

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

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

24 6. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
25 license issued by the Board.

26 7. Section 4301 states:

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.

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

.....

(1) 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

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

13 REGULATORY PROVISIONS

14 8. California Code of Regulations, title 16, section 1770, states:

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

21 COST RECOVERY

22 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
23 administrative law judge to direct a licentiate found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Criminal Convictions)

3 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
5 that Respondent was convicted of a crimes which are substantially related to the qualifications,
6 functions, or duties of a pharmacy technician, as follows:

7 11. On or about September 13, 2010, in the criminal matter entitled *The People of the*
8 *State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2010, No.
9 XNWLA06584101), Respondent was convicted of violating Penal Code section 594, subdivision
10 (a), vandalism, a felony. Respondent was placed on formal probation for a period of three years
11 and was ordered to serve two hundred and seventy days in jail. The basis for the conviction is that
12 on or about May 8, 2010, Respondent kicked in the front door of the residence of his former
13 girlfriend's house. Respondent further pulled out his former girlfriend's hair and spit on her.
14 Respondent punched and damaged the television and cell phone, and then fled the residence. On
15 or about August 16, 2010, Respondent admitted to police officers that he damaged his former
16 girlfriend's television and cell phone.

17 12. On or about November 28, 2007, in the criminal matter entitled *The People of the*
18 *State of California vs. Alvaro Molina* (Super. Ct. County of Los Angeles, 2007, No. BA327607),
19 Respondent was convicted of violating Penal Code section 594, subdivision (a), vandalism, a
20 felony. Respondent was placed on formal probation for a period of three years and was ordered to
21 serve sixty days in jail, pay restitution to the victim, and not associate with gang members. The
22 basis for the conviction is that on or about August 15, 2007, Respondent and another male were
23 causing a disturbance in their neighborhood. A neighbor began videotaping Respondent and the
24 other male to record their disruptive behavior. When Respondent saw the neighbor videotaping,
25 he dragged the neighbor down a flight of stairs to the ground causing physical injury. Respondent
26 then grabbed the video camera, smashed it to the ground, and then threw it around causing it to
27 shatter into pieces.

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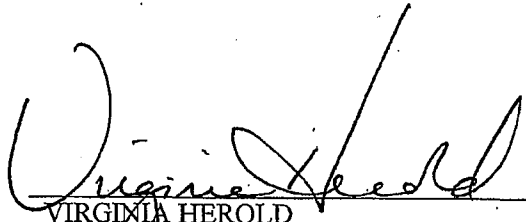
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PRAYER

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 License Number TCH 66419, issued to Alvaro Ernesto Molina;
2. Ordering Alvaro Ernesto Molina 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: 7/15/11



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

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