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

12 In the Matter of the Accusation Against:

Case No. 4330

13 **MONIQUE ESTELLA MARKHAM**
14 **14030 Dicky Street, #D**
15 **Whittier, CA 90605**

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician Registration No. TCH**
17 **75513**

[Gov. Code, §11520]

Respondent.

18
19 **FINDINGS OF FACT**

20 1. On or about October 9, 2012, Complainant Virginia K. Herold, in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
22 filed Accusation No. 4330 against Monique Estella Markham ("Respondent") before the Board of
23 Pharmacy. (Accusation attached as Exhibit A.)

24 2. On or about April 14, 2007, the Board of Pharmacy ("Board") issued Pharmacy
25 Technician Registration No. TCH 75513 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 4330
27 and will expire on December 31, 2012, unless renewed.
28

1 3. On or about October 16, 2012, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4330, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is: 14030 Dicky Street, #D, Whittier, CA 90605.

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

10 5. The documents described in Paragraph 3 were not returned by the U.S. Postal Service
11 and Respondent signed the Domestic Return Receipt for the documents served by Certified Mail.

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

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 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.

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4330.

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

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

22 9. 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 Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 4330, finds that
27 the charges and allegations in Accusation No. 4330, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

1 10. 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 \$2,122.50 as of November 26, 2012.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Monique Estella Markham has
6 subjected her Pharmacy Technician Registration No. TCH 75513 to discipline.

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

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

11 (a) Business and Professions Code sections 4301, subdivision (l) and 490 and
12 California Code of Regulations, title 16, section 1770, in that on or about December 9, 2011, after
13 pleading guilty, Respondent was convicted of a crime substantially related to the functions,
14 duties, or qualifications of a pharmacy technician in the matter *People of the State of California v.*
15 *Monique E. Markham* (Super. Ct. Los Angeles County, 2011 No. VA122641), specifically one
16 felony count of violating Penal Code section 245, subdivision (a)(1) [assault with a deadly
17 weapon].

18 (b) Business and Professions Code section 4301, subdivision (f), in that on or about
19 November 30, 2011, Respondent committed acts involving moral turpitude when Respondent
20 drove her vehicle at a high rate of speed toward three individuals and the victims had to quickly
21 move out of the way in order to avoid being struck by Respondent's vehicle.

22 (c) Business and Professions Code section 4301, subdivision (h), in that on or
23 about November 30, 2011, Respondent used alcoholic beverages to an extent or in a manner
24 dangerous or injurious to herself, another person, or the public when Respondent consumed seven
25 hard liquor drinks and drove her vehicle at a high rate of speed toward three individuals and the
26 victims had to quickly move out of the way in order to avoid being struck by Respondent's
27 vehicle.

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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.

It is so ORDERED ON December 12, 2012.

By Stanley C. Weiss
STANLEY C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4330

12 **MONIQUE ESTELLA MARKHAM**
14030 Dicky Street, #D
13 Whittier, CA 90605

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
75513

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about April 14, 2007, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 75513 to Monique Estella Markham (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on December 31, 2012, unless renewed.

25 **JURISDICTION**

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

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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, in pertinent part:

"(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 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

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:

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

4 ...
5 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
6 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
7 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
8 to the extent that the use impairs the ability of the person to conduct with safety to the public the
9 practice authorized by the license.

10 ...
11 "(i) The conviction of a crime substantially related to the qualifications, functions, and
12 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
14 substances or of a violation of the statutes of this state regulating controlled substances or
15 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
16 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
17 The board may inquire into the circumstances surrounding the commission of the crime, in order
18 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
19 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
20 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
21 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
22 of this provision. The board may take action when the time for appeal has elapsed, or the
23 judgment of conviction has been affirmed on appeal or when an order granting probation is made
24 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
25 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
26 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
27 indictment."

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1 then began to argue with her boyfriend's sister. At this point, the bartender asked the group to
2 leave the bar.

3 b. Once outside the bar, Respondent's boyfriend left the bar but Respondent
4 continued to argue with his sister. The bartender came outside and requested that they leave the
5 premises. Respondent walked away, got in her car, and then drove it towards her boyfriend's
6 sister, the bartender, and another person at a high rate of speed in an attempt to strike them with
7 her vehicle. The victims had to quickly move out of the way in order to avoid being struck by
8 Respondent's vehicle. Respondent then drove away to her residence.

9 c. During the booking procedure, Respondent admitted to drinking seven hard
10 liquor drinks and being extremely intoxicated but did not remember anything that occurred in the
11 bar between her and the victims. When asked about the assault with the vehicle, she indicated
12 that she did not remember her trip home or attempting to strike the victims with her vehicle while
13 they stood in front of the bar.

14 SECOND CAUSE FOR DISCIPLINE

15 (Acts Involving Moral Turpitude)

16 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
17 that Respondent committed acts involving moral turpitude. Complainant refers to, and by this
18 reference incorporates, the allegations set forth above in paragraph 10, including subparagraphs
19 (a)-(c), as though fully set forth herein.

20 THIRD CAUSE FOR DISCIPLINE

21 (Dangerous Use of Alcohol)

22 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
23 that on or about November 30, 2011, Respondent used alcoholic beverages to an extent or in a
24 manner dangerous or injurious to herself, another person, or the public. Complainant refers to,
25 and by this reference incorporates, the allegations set forth above in paragraph 10, including
26 subparagraphs (a)-(c), as though fully set forth herein.

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1. PRAYER

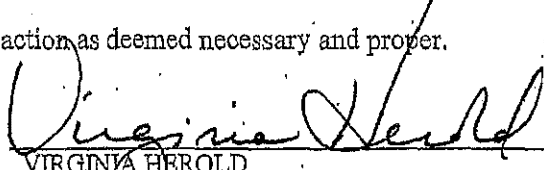
2. WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3. and that following the hearing, the Board issue a decision:

4. 1. Revoking or suspending Pharmacy Technician Registration No. TCH 75513, issued
5. to Respondent;

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

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

9. DATED: 10/9/12


10. VIRGINIA HEROLD
11. Executive Officer
12. Board of Pharmacy
13. Department of Consumer Affairs
14. State of California
15. Complainant

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