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

In the Matter of the Accusation Against:

BRENDA GRANADOS
24588 Skyland Drive
Moreno Valley, CA 92557

Pharmacy Technician Registration No. TCH
111863

Respondent.

Case No. 4447

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about January 7, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4447 against Brenda Granados (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about June 1, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 111863 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4447 and will expire on March 31, 2013, unless renewed.
3. On or about January 16, 2013, Respondent was served by First Class and Certified Mail copies of the Accusation No. 4447, 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

1 section 4100, is required to be reported and maintained with the Board. Respondent's address of
2 record was and is:

3 24588 Skyland Drive
4 Moreno Valley, CA 92557.

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

8 5. On or about January 24 and 29, 2013, the aforementioned documents were returned
9 by the U.S. Postal Service marked "return to sender/unable to forward." The address on the
10 documents was the same as the address on file with the Board. Respondent failed to maintain an
11 updated address with the Board and the Board has made attempts to serve the Respondent at the
12 address on file. Respondent has not made herself available for service and therefore, has not
13 availed herself of her right to file a notice of defense and appear at hearing.

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4447.

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. 4447, finds that

1 the charges and allegations in Accusation No. 4447, 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 \$2,440.00 as of February 4, 2013.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Brenda Granados has subjected
8 her Pharmacy Technician Registration No. TCH 111863 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 Registration based upon the following violations alleged in the Accusation which are supported
12 by the evidence contained in the Default Decision Evidence Packet in this case:

13 a. Respondent is subject to disciplinary action under section 4301, subdivision (h),
14 in that Respondent used Methamphetamine and Marijuana, controlled substances, without a
15 prescription when she was arrested for driving under the influence of drugs/alcohol on September
16 29, 2009.

17 b. Respondent is subject to disciplinary action under sections 490 and 4301,
18 subdivision (l), of the Code in that Respondent was convicted of a crime substantially related to
19 the qualifications, functions and duties of a pharmacy technician. On or about November 8, 2011,
20 in a criminal proceeding entitled *People of the State of California vs. Brenda Granados*, in the
21 Riverside Superior Court, in case number RIM113213, Respondent pled guilty to violating
22 Vehicle Code section 23152(b) (driving under the influence of alcohol/ 0.08 percent), a
23 misdemeanor.

24 c. Respondent is subject to disciplinary action under section 4301, subdivision (h),
25 in that Respondent used alcohol in a dangerous manner when she drove her car while intoxicated
26 on August 9, 2011.

27 d. Respondent is subject to disciplinary action under Code section 4301,
28 subdivisions (h), (j), and (o), and Health and Safety Code sections 11170 and 11171, in that

1 Respondent possessed and consumed controlled substances, without a prescription in violation of
2 Code section 4060.

3 e. Respondent is subject to disciplinary action under section 4301 in that she
4 engaged in unprofessional conduct. On March 8, 2012, Respondent engaged in mutual combat
5 with her boyfriend while he was driving their car, causing him injuries and causing him to swerve
6 onto the shoulder of the road. Both parties suffered minor injuries from the altercation and both
7 parties were arrested for violation of Penal Code section 243(e)(1) (Battery on Spouse/Partner).

8 ORDER

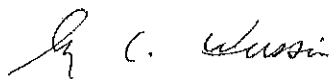
9 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 111863, heretofore
10 issued to Respondent Brenda Granados, is revoked.

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

15 This Decision shall become effective on April 17, 2013.

16 It is so ORDERED ON March 18, 2013.

17 BOARD OF PHARMACY
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA

20 
21 By _____
22 STANLEY C. WEISSER
23 Board President

24 70682836.DOC
25 DOJ Matter ID:SD2012704344

26 Attachment:
27 Exhibit A: Accusation
28

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 DIANE DE KERVOR
Deputy Attorney General
4 State Bar No. 174721
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2611
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:
12
13 **BRENDA GRANADOS**
24588 Skyland Drive
Moreno Valley, CA 92557
14
15 **Pharmacy Technician Registration No. TCH**
111863
16
17 Respondent.

Case No. 4447
A C C U S A T I O N

18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about June 1, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 111863 to Brenda Granados (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on March 31, 2013, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or
6 revoked.”

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

11 **STATUTORY AND REGULATORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to evaluate
14 the rehabilitation of a person when:

15 (a) Considering the denial of a license by the board under Section 480; or

16 (b) Considering suspension or revocation of a license under Section 490.

17 Each board shall take into account all competent evidence of rehabilitation
18 furnished by the applicant or licensee.

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

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1 8. Section 492 of the Code states:

2 Notwithstanding any other provision of law, successful completion of any
3 diversion program under the Penal Code, or successful completion of an alcohol and
4 drug problem assessment program under Article 5 (commencing with section
5 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
6 agency established under Division 2 ([Healing Arts] commencing with Section 500)
7 of this code, or any initiative act referred to in that division, from taking disciplinary
8 action against a licensee or from denying a license for professional misconduct,
9 notwithstanding that evidence of that misconduct may be recorded in a record
10 pertaining to an arrest.

11 This section shall not be construed to apply to any drug diversion program
12 operated by any agency established under Division 2 (commencing with Section 500)
13 of this code, or any initiative act referred to in that division.

14 9. Section 493 of the Code states:

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

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

28 10. 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:

.....

(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 of the United States
regulating controlled substances and dangerous drugs.

....

1
2 (l) The conviction of a crime substantially related to the qualifications, functions,
3 and duties of a licensee under this chapter. The record of conviction of a violation of
4 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
5 regulating controlled substances or of a violation of the statutes of this state
6 regulating controlled substances or dangerous drugs shall be conclusive evidence of
7 unprofessional conduct. In all other cases, the record of conviction shall be
8 conclusive evidence only of the fact that the conviction occurred. The board may
9 inquire into the circumstances surrounding the commission of the crime, in order to
10 fix the degree of discipline or, in the case of a conviction not involving controlled
11 substances or dangerous drugs, to determine if the conviction is of an offense
12 substantially related to the qualifications, functions, and duties of a licensee under this
13 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
14 contendere is deemed to be a conviction within the meaning of this provision. The
15 board may take action when the time for appeal has elapsed, or the judgment of
16 conviction has been affirmed on appeal or when an order granting probation is made
17 suspending the imposition of sentence, irrespective of a subsequent order under
18 Section 1203.4 of the Penal code allowing the person to withdraw his or her plea of
19 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
20 dismissing the accusation, information or indictment.

....

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

25 (p) Actions or conduct that would have warranted denial of a license.

....

26 11. Section 4022 of the Code states

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

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

31 (b) Any device that bears the statement: "Caution: federal law restricts this
32 device to sale by or on the order of a _____," "Rx only," or words of similar
33 import, the blank to be filled in with the designation of the practitioner licensed to use
34 or order use of the device.

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

37 12. Section 4060 of the Code states:

38 No person shall possess any controlled substance, except that furnished to a
person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or
furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to

1 Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
2 assistant pursuant to Section 3502.1. This section shall not apply to the possession of
3 any controlled substance by a manufacturer, wholesaler, pharmacy, physician,
4 podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or
5 physician assistant, when in stock in containers correctly labeled with the name and
6 address of the supplier or producer.

7 Nothing in this section authorizes a certified nurse-midwife, a nurse
8 practitioner, or a physician assistant to order his or her own stock of dangerous drugs
9 and devices.

10 13. Health and Safety Code section 11170 provides that "No person shall prescribe,
11 administer, or furnish a controlled substance for himself.

12 14. Health and Safety Code section 11171 provides that "No person shall prescribe,
13 administer, or furnish a controlled substance except under the conditions and in the manner
14 provided by this division."

15 15. Title 16, California Code of Regulations, section 1769, states:

16

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

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

22 (2) Total criminal record.

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

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

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

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

28 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.

1 17. Marijuana is a Schedule I controlled substance as designated by Health and Safety
2 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
3 Professions Code section 4022.

4 18. Methamphetamine is a Schedule II controlled substance as designated by Health
5 and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and
6 Professions Code section 4022.

7
8 **COST RECOVERY**

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct –Use of Controlled Substances, Methamphetamine and**
15 **Marijuana, Without a Prescription on September 29, 2009)**

16 20. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
17 that Respondent used Methamphetamine and Marijuana, controlled substances, without a
18 prescription when she was arrested for driving under the influence of drugs/alcohol on September
19 29, 2009. On that day, Respondent was stopped by a traffic officer when she drove through a
20 stop sign and was weaving between lanes. Respondent's eyes were red and watery. Respondent
21 did not have her license and a records check revealed that her license was suspended. Respondent
22 admitted to the police, but later denied, that she had consumed alcohol. Respondent admitted to
23 the police that she had consumed Marijuana. A Marijuana pipe was located in her car. At the
24 police station, Respondent's blood test was positive for Amphetamines. Respondent was charged
25 with driving under the influence of alcohol/drugs, but the Court dismissed the case pursuant to
26 Penal Code section 1385.

27 ///

1 SECOND CAUSE FOR DISCIPLINE

2 (November 8, 2011 Criminal Conviction for Driving Under the Influence of Alcohol on
3 August 9, 2011)

4 21. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
5 (l), of the Code in that Respondent was convicted of a crime substantially related to the
6 qualifications, functions and duties of a pharmacy technician. The circumstances are as follows:

7 a. On or about November 8, 2011, in a criminal proceeding entitled *People of the State*
8 *of California vs. Brenda Granados*, in the Riverside Superior Court, in case number
9 RIM1113213, Respondent pled guilty to violating Vehicle Code section 23152(b) (driving under
10 the influence of alcohol/ 0.08 percent), a misdemeanor.

11 b. The circumstances that led to the conviction are that on or about August 9, 2011,
12 Riverside County Sheriffs responded to a citizen report that a car was weaving on the roadway
13 and eventually parked in a parking lot. When contacted, Respondent appeared intoxicated. She
14 admitted to drinking a tall can of beer at the park. Several empty beer bottles and cans were
15 located in the car as well as cups full of liquid that smelled like alcohol. Respondent failed a field
16 sobriety test and a Preliminary Alcohol Screening Test reflected a blood alcohol concentration of
17 .138%. She was arrested for driving under the influence of alcohol. A subsequent blood test
18 tested positive for Amphetamine and Methamphetamine as well as having a blood alcohol
19 concentration of 0.14%. Respondent was charged with driving under the influence of
20 alcohol/drugs and with driving under the influence of alcohol/.08%.

21 c. As a result of the conviction, Respondent was placed on three years summary
22 probation and ordered to serve eight days in custody through an Electronic Monitoring Program.
23 The Court granted Respondent's motion to convert this to eight days in a Work Release Program.
24 She was also ordered to attend and complete a four month first offender DUI program and to pay
25 \$2,283.45 in fines, fees, and restitution.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of Alcohol In a Dangerous Manner on August 9, 2011)**

3
4 22. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
5 that Respondent used alcohol in a dangerous manner when she drove her car while intoxicated on
6 August 9, 2011. The facts supporting this cause for discipline are in paragraph 21 above.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct – Violation of Drug and Pharmacy Laws)**

9 23. Respondent is subject to disciplinary action under Code section 4301,
10 subdivisions (h), (j), and (o), and Health and Safety Code sections 11170 and 11171, in that
11 Respondent possessed and consumed controlled substances, without a prescription in violation of
12 Code section 4060, as detailed in paragraphs 20 through 23, above, in violation of drug and
13 pharmacy laws.

14 **FIFTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct – Battery on Partner While He Was Driving on March 8, 2012)**

16 24. Respondent is subject to disciplinary action under section 4301 in that she engaged in
17 unprofessional conduct. On March 8, 2012, Respondent engaged in mutual combat with her
18 boyfriend while he was driving their car, causing him injuries and causing him to swerve onto the
19 shoulder of the road. Both parties suffered minor injuries from the altercation and both parties
20 were arrested for violation of Penal Code section 243(e)(1) (Battery on Spouse/Partner). The
21 district attorney did not press charges.

22 **PRAYER**

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

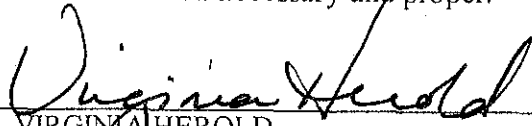
25 1. Revoking or suspending Pharmacy Technician Registration Number TCH 111863,
26 issued to Brenda Granados;

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2. Ordering Brenda Granados 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: 1/7/13



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

SD2012704344
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