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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. 4499
LEIGH ANN HANDEL PO Box 1212 Pine Valley, CA 91962	DEFAULT DECISION AND ORDER
Pharmacy Technician Registration No. TCH 121082 Respondent.	[Gov. Code, §11520]

FINDINGS OF FACT

1. On March 21, 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. 4499 against Leigh Ann Handel (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On March 22, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 121082 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4499 and will expire on November 30, 2013, unless renewed.

3. On March 28, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4499, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)

1 at Respondent's address of record which, pursuant to Business and Professions Code section
2 4100, is required to be reported and maintained with the Board. Respondent's address of record
3 was and is PO Box 1212 Pine Valley, CA 91962.

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

6 5. On April 11, 2013, the domestic return receipt with article number 7196 9008
7 9111 8480 0143, for the aforementioned documents was returned by the U.S. Postal Service
8 indicating that Respondent received the Accusation packet on April 9, 2013.

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

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon
16 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation
17 No. 4499.

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
20 the hearing, the agency may take action based upon the respondent's express
21 admissions or upon other evidence and affidavits may be used as evidence
22 without any notice to respondent.

23 9. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 4499, finds that
28 the charges and allegations in Accusation No. 4499, are separately and severally, found to be true
and correct by clear and convincing evidence.

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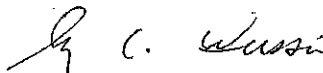
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 121082, heretofore issued to Respondent Leigh Ann Handel, 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 August 23, 2013.

It is so ORDERED July 24, 2013.



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

70710017.DOC
DOJ Matter ID:SD2012704537

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 ALFREDO TERRAZAS
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:	Case No. 4499
13 LEIGH ANN HANDEL	A C C U S A T I O N
14 PO Box 1212	
14 Pine Valley, CA 91962	
15 Pharmacy Technician Registration No. TCH 121082	
16 Respondent.	

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 22 2. On March 22, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 121082 to Leigh Ann Handel (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 November 30, 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 (Code) unless otherwise indicated.

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

9 5. Section 4300, subdivision (a), of the Code states that every license issued may be
10 suspended or revoked.

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

13 Each board under the provisions of this code shall develop criteria to
14 evaluate 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.

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by
25 a board within the department pursuant to law to deny an application for a license
26 or to suspend or revoke a license or otherwise take disciplinary action against a
27 person who holds a license, upon the ground that the applicant or the licensee has
28 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

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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.'

9. 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.

....

(i) 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.

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1 **REGULATORY PROVISIONS**

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

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

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

9 (2) Total criminal record.

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

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

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

15 11. California Code of Regulations, title 16, section 1770, states:

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

23 **COST RECOVERY**

24 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
25 the administrative law judge to direct a licentiate found to have committed a violation or
26 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
27 and enforcement of the case, with failure of the licentiate to comply subjecting the license to not
28 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
may be included in a stipulated settlement.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(September 17, 2012 Criminal Conviction for DUI on May 31, 2012)**

3 13. Respondent subjected her pharmacy technician registration to discipline under
4 Code sections 490 and 4301, subdivision (l) in that she was convicted of a crime that is
5 substantially related to the qualifications, functions, and duties of a registered pharmacy
6 technician. The circumstances are as follows:

7 a. On September 17, 2012, in a criminal proceeding entitled *The People of*
8 *the State of California vs. Leigh Ann Handel*, in San Diego County Superior Court East County
9 Division, Case Number C322092, Respondent was convicted on her plea of guilty to violating
10 Vehicle Code (VC) 23152 subdivision (a), driving under the combined influence of alcohol and a
11 drug (DUI), a misdemeanor. Respondent admitted and the court found true the allegation that
12 Respondent's BAC was .15% or more, a sentencing enhancement pursuant to VC section 23578.
13 Respondent was also charged with violation of VC section 23152, subdivision (b), driving with a
14 blood alcohol concentration (BAC) of 0.08 percent or more, a misdemeanor, which was
15 dismissed pursuant to a plea bargain.

16 b. As a result of the conviction, on September 17, 2012, Respondent was
17 sentenced to summary probation for five years and ordered to render 15 days of community
18 service under the public service program, with credit for one day actually served; pay penalty
19 assessments, fines, and fees; and attend and satisfactorily complete a nine-month first conviction
20 DUI program.

21 c. The facts that led to the conviction are that on May 31, 2012, an officer of
22 the California Highway Patrol (CHP) responded to a vehicular collision, which involved
23 Respondent's car at the east-bound side of interstate highway 8, west of Tavern Road in Alpine,
24 California. At or about 10:05 p.m., upon contact with Respondent, who was standing up and
25 leaning at the right side of the vehicle, the officer immediately noticed her red watery eyes.
26 Emergency personnel arrived and Respondent was taken to Grossmont Hospital for additional
27 medical treatment. The officer continued his investigation of Respondent's vehicle where an
28 empty 12 ounce can of beer was found on the floor. The officer proceeded to the hospital and

1 continued interviewing Respondent, who admitted to driving alone, with no recollection of the
2 collision, and of consuming one bottle of red wine between 2:00 p.m. and 8:30 p.m. Respondent
3 failed the field sobriety tests (FST) as explained and demonstrated and refused to perform the
4 preliminary alcohol screening test (PAS). However, Respondent consented to a blood draw and
5 upon clearance, was transported and booked into the Las Colinas Detention Facility. Results of
6 Respondent's blood test indicated a BAC of .26 percent.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Dangerous Use Of Alcohol)**

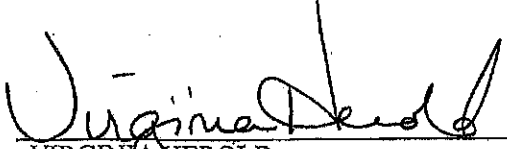
9 14. Respondent subjected her pharmacy technician registration to discipline under
10 Code sections 490 and 4301, subdivision (h) in that on May 31, 2012, she used alcohol to the
11 extent and in a manner that was dangerous and injurious to herself and to the public, as described
12 in the cause above, which is incorporated by reference.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH
17 121082, issued to Leigh Ann Handel;
- 18 2. Ordering Leigh Ann Handel to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22
- 23

24 DATED: 3/21/13


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

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