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

In the Matter of the Accusation Against:
LARRY DAVID BADER JR.
232 Laurine Lane
Fallbrook, CA 92028
Pharmacy Technician Registration
No. TCH 114230

Respondent.

Case No. 4632
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 22, 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. 4632 against Larry David Bader Jr. (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)
2. On or about November 14, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 114230 to Respondent. The Pharmacy Technician Registration expired on February 28, 2013, and has not been renewed.
3. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license shall not deprive the Board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

1 4. On or about July 30, 2013, Respondent was served by Certified and First Class Mail
2 copies of Accusation No. 4632, 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 and California Code of Regulations, title 16, section 1704, is required to be reported and
6 maintained with the Board. Respondent's address of record was and is:

7 232 Laurine Lane
8 Fallbrook, CA 92028

9 5. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 6. On or about August 1, 2013, Respondent signed the Domestic Return Receipt
13 acknowledging receipt of the aforementioned documents served by Certified Mail.

14 7. 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 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4632.

23 9. California Government Code section 11520 states, in pertinent part:

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

28 10. Pursuant to its authority under Government Code section 11520, the Board finds
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

1 file at the Board's offices regarding the allegations contained in Accusation No. 4632, finds that
2 the charges and allegations in Accusation No. 4632, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 11. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$492.50 as of August 27, 2013.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Larry David Bader Jr. has
9 subjected his Pharmacy Technician Registration No. TCH 114230 to discipline.

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

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

14 a. Respondent has subjected his registration to discipline under sections 490 and
15 4301, subdivision (l) of the Code in that on or about July 10, 2012, in a criminal proceeding
16 entitled *People of the State of California v. Larry David Bader Jr.*, in Riverside County Superior
17 Court, case number SWM1203459, Respondent was convicted on his plea of guilty to violating
18 Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol and/or drugs;
19 Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC)
20 of .08 or more; and Vehicle Code section 20002, subdivision (a), hit and run with property
21 damage, crimes that are substantially related to the qualifications, duties, and functions of a
22 pharmacy technician.

23 b. Respondent has subjected his registration to disciplinary action under section
24 4301, subdivision (h) of the Code for unprofessional conduct in that on or about April 26, 2012,
25 Respondent was substantially impaired by alcoholic beverages and prescription medications, and
26 under their combined influence, he operated a motor vehicle in a manner that was dangerous to
27 himself and others.

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c. Respondent has subjected his registration to disciplinary action under sections 4301, subdivision (k) of the Code for unprofessional conduct in that on or about July 12, 2012, Respondent was convicted of multiple alcohol-related criminal offenses.

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ORDER

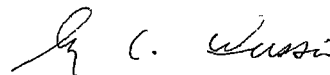
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 114230, heretofore issued to Respondent Larry David Bader Jr., is revoked.

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 November 22, 2013.

It is so ORDERED ON October 23, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

DOJ Matter ID: SD2011801852

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 LINDA K. SCHNEIDER
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3 State Bar No. 101336
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4632

13 **LARRY DAVID BADER JR.**
14 **232 Laurine Lane**
Fallbrook, CA 92028

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 114230**

17 Respondent.

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 November 14, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 114230 to Larry David Bader Jr. (Respondent). The Pharmacy
24 Technician Registration expired on February 28, 2013, and has not been renewed.

25 **JURISDICTION**

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

1 9. Section 4301 of the Code states:

2 The board shall take action against any holder of a license who is guilty of
3 unprofessional conduct or whose license has been procured by fraud or
4 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
5 not limited to, any of the following:

6

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

12

13 (k) The conviction of more than one misdemeanor or any felony involving the
14 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
15 or any combination of those substances.

16 (l) The conviction of a crime substantially related to the qualifications,
17 functions, and duties of a licensee under this chapter. The record of conviction of a
18 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
19 States Code regulating controlled substances or of a violation of the statutes of this
20 state regulating controlled substances or dangerous drugs shall be conclusive
21 evidence of unprofessional conduct. In all other cases, the record of conviction shall
22 be conclusive evidence only of the fact that the conviction occurred. The board may
23 inquire into the circumstances surrounding the commission of the crime, in order to
24 fix the degree of discipline or, in the case of a conviction not involving controlled
25 substances or dangerous drugs, to determine if the conviction is of an offense
26 substantially related to the qualifications, functions, and duties of a licensee under this
27 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
28 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.

. . . .

REGULATORY PROVISIONS

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

. . . .

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

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

(2) Total criminal record.

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

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

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

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

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.

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(July 10, 2012 Criminal Convictions for DUI and Hit & Run on April 26, 2012)

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

a. On or about July 10, 2012, in a criminal proceeding entitled *People of the State of California v. Larry David Bader Jr.*, in Riverside County Superior Court, case number SWM1203459, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol and/or drugs; Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more; and

1 Vehicle Code section 20002, subdivision (a), hit and run with property damage, misdemeanors.

2 b. As a result of the convictions, on or about July 10, 2012, Respondent was
3 granted 48 months summary probation, and committed to the custody of the Riverside County
4 Sheriff for 45 days, with credit for two days, to be served in the Sheriff's Labor Program.
5 Respondent was further ordered to complete a Drinking Driver Program, attend 44 Alcoholics
6 Anonymous meetings, pay fees and fines, and comply with DUI probation terms. Respondent
7 was also ordered to install an interlock device on his vehicle.

8 c. The facts that led to the convictions are that on or about the afternoon of April
9 26, 2012, a Riverside County Sheriff's deputy responded to a call of a non-injury hit and run
10 incident in the parking lot of a Temecula Wal-Mart. Upon arrival, the deputy contacted the
11 victim, witness, and a store security officer. The witness told the deputy that a red Ford Mustang
12 pulled into a parking spot near her car. The Mustang drove forward into a van, then backed up
13 and pulled forward again. This time the Mustang hit the vehicle parked next to the witness. The
14 Mustang backed up again, pulled forward and hit the car a second time. The driver of the
15 Mustang (Respondent) exited his vehicle and walked inside the Wal-Mart. A computer check
16 revealed that the vehicle was registered to Respondent, who the security officer identified as a
17 Wal-Mart employee. The security officer contacted Respondent and he was escorted to the
18 security office. Upon contact with Respondent, he told the deputy that he had consumed
19 prescription medications and a 32-ounce beer earlier in the day. Respondent drove to work, but
20 he was not aware he had hit any other vehicle. Respondent had difficulty maintaining his balance
21 while speaking with the deputy, and he was unable to perform the field sobriety tests as explained
22 and demonstrated by the deputy. Respondent was arrested for driving under the influence.
23 During booking, Respondent provided a blood sample which was analyzed with a BAC of .33
24 percent. Respondent also tested positive for benzodiazepines, fluoxetine, and lorfluooxetine.

25 **SECOND CAUSE FOR DISCIPLINE**

26 **(Dangerous Use of Alcohol)**

27 14. Respondent has subjected his registration to disciplinary action under section 4301,
28 subdivision (h) of the Code for unprofessional conduct in that on or about April 26, 2012,

1 Respondent was substantially impaired by alcoholic beverages and prescription medications, and
2 under their combined influence, he operated a motor vehicle in a manner that was dangerous to
3 himself and others, as detailed in paragraph 13, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Multiple Alcohol-Related Convictions)**

6 15. Respondent has subjected his registration to disciplinary action under sections 4301,
7 subdivision (k) of the Code for unprofessional conduct in that on or about July 12, 2012,
8 Respondent was convicted of violating Vehicle Code section 23152, subdivision (a) (driving
9 under the influence of alcohol), Vehicle Code section 23152, subdivision (b), (driving with a
10 BAC of .08 percent or more), and Vehicle Code section 20002, subdivision (a), hit and run, as
11 described in paragraph 13, above.

12 **PRAYER**

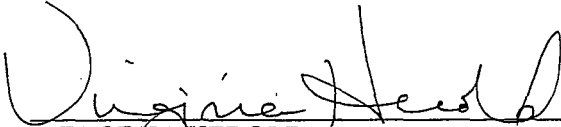
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Pharmacy issue a decision:

15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114230,
16 issued to Larry David Bader Jr.;

17 2. Ordering Larry David Bader Jr. to pay the Board of Pharmacy the reasonable costs of
18 the investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;

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

21
22
23 DATED: 7/22/13


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

SD2013805106