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

In the Matter of the Statement of Issues
Against:
KYLE JAMES GALLAGHER
Applicant for Pharmacy Technician License

Respondent.

Case No. 5310
OAH No. 2015041146
DEFAULT DECISION AND ORDER
[Gov. Code, § 11520]

FINDINGS OF FACT

1. On or about January 19, 2015, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Statement of Issues No. 5310 against Kyle James Gallagher (Respondent) before the Board of Pharmacy.
2. On or about December 3, 2013, Respondent filed an application dated December 2, 2013 with the Board of Pharmacy to obtain a pharmacy technician license.
3. On or about August 6, 2014, the Board issued a letter denying Respondent's application for a pharmacy technician license. On or about September 7, 2014, Respondent appealed the Board's denial of his application and requested a hearing.
4. On or about February 23, 2015, an employee of the Department of Justice served by Certified and First Class Mail a copy of the Statement of Issues No. 5310, Statement to

1 Respondent, Notice of Defense, and Request for Discovery to Respondent's address on the
2 application form, which was and is 325 Willow Green Court, Vacaville, CA 95687. A copy of
3 the Statement of Issues is attached as exhibit A and is incorporated herein by reference.

4 5. Service of the Statement of Issues was effective as a matter of law under the
5 provisions of Government Code section 11505, subdivision (c).

6 6. On or about September 7, 2014, Respondent appealed the denial of his application
7 and requested a hearing in this action. A Notice of Hearing was served by mail at Respondent's
8 address on the application and it informed him that an administrative hearing in this matter was
9 scheduled for June 30, 2015. Respondent failed to appear at that hearing.

10 7. Government Code section 11506 states, in pertinent part:

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

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

17 (a) If the respondent either fails to file a notice of defense or to appear at the
18 hearing, the agency may take action based upon the respondent's express admissions
19 or upon other evidence and affidavits may be used as evidence without any notice to
20 respondent; and where the burden of proof is on the respondent to establish that the
21 respondent is entitled to the agency action sought, the agency may act without taking
22 evidence.

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 based upon the
25 allegations set forth in the Statement of Issues and Respondent's failure to establish entitlement to
26 issuance of a license.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Kyle James Gallagher has
subjected his application for a pharmacy technician license to denial.

2. Service of Statement of Issues No. 5310 and related documents was proper and in
accordance with the law.

3. The agency has jurisdiction to adjudicate this case by default.

Exhibit A
Statement of Issues No. 5310

1 KAMALA D. HARRIS
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Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
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5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@doj.ca.gov
7 *Attorneys for Complainant*

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

11 In the Matter of the Statement of Issues
12 Against:

Case No. 5310

13 **KYLE JAMES GALLAGHER**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about December 3, 2013, the Board of Pharmacy received an application for
22 registration as a pharmacy technician from Kyle James Gallagher (Respondent). On or about
23 December 2, 2013, Respondent certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 August 6, 2014.

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1 information with the driver of the damaged vehicle. When police officers with the Vacaville
2 Police Department responded to Respondent's residence after the incident, Respondent told one
3 of the officers that he had been drinking all day. Respondent was then arrested for driving under
4 the influence of alcohol. A blood sample taken from Respondent on January 22, 2013 indicated
5 that his blood alcohol count was 0.37%.

6 **FIRST CAUSE FOR DENIAL OF APPLICATION**

7 **(Conviction of Substantially Related Crime)**

8 10. Respondent's application is subject to denial under the following section(s) of the
9 Code: 480, subdivision (a)(1); 480, subdivision (a)(3)(B) by reference to 4301, subdivision (l),
10 4300, subdivision (c), and California Code of Regulations, title 16, section 1770, for conviction of
11 a substantially related crime, in that on or about September 3, 2014, as described above in
12 paragraph 9, Respondent suffered a substantially related conviction.

13 **SECOND CAUSE FOR DENIAL OF APPLICATION**

14 **(Use of Alcohol in a Dangerous Manner)**

15 11. Respondent's application is subject to denial under sections 4300, subdivision (c) and
16 4301, subdivision (h) of the Code in that on or about February 5, 2012 and January 22, 2013, as
17 described above in paragraphs 8 and 9.a., Respondent used alcohol in a dangerous manner.

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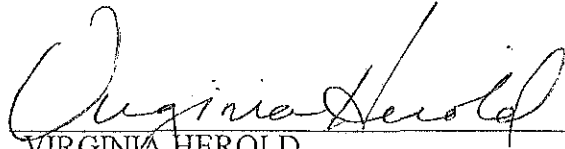
1 **PRAYER**

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

- 4 1. Denying the application of Kyle James Gallagher to be a pharmacy technician;
5 2. Taking such other and further action as deemed necessary and proper.

6
7 DATED: _____

1/19/15



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

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