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

13 In the Matter of the Accusation Against:

Case No. 5625

14 **DANIEL JEAN-PAUL MURPHY**
15 **40721 La Salle Place**
Murrieta, CA 92563

OAH No. 2015110962

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician Registration No. TCH**
17 **72306**

[Gov. Code, §11520]

18
19 Respondent.

20 FINDINGS OF FACT

21 1. On or about January 20, 2016, Complainant Virginia K. Herold, in her official
22 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
23 Affairs, filed First Amended Accusation No. 5625 against Daniel Jean-Paul Murphy
24 (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

25
26 2. On or about October 24, 2006, the Board issued Pharmacy Technician Registration
27 No. TCH 72306 to Respondent. The Pharmacy Technician Registration was in full force and
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1 effect at all times relevant to the charges brought in Accusation No. 5625 and will expire on
2 October 31, 2016, unless renewed.

3 3. On or about January 25, 2016, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 5625, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is:

9 40721 La Salle Place
10 Murrieta, CA 92563

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

13 5. On or about November 4, 2015, Respondent signed and returned a Notice of Defense,
14 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's
15 address of record and it informed him that an administrative hearing in this matter was scheduled
16 for February 8, 2016. Respondent failed to appear at that hearing.

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

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

23 7. 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 8. 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. 5625, finds that
2 the charges and allegations in Accusation No. 5625, are separately and severally found to be true
3 and correct by clear and convincing evidence.

4 9. 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 \$3,320.00 as of February 8, 2016.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Daniel Jean-Paul Murphy has
9 subjected his Pharmacy Technician Registration No. TCH 72306 to discipline.

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

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

14 a. Respondent has subjected his license to discipline under Business and
15 Professions Code (Code) sections 490 and 4301(l) of the Code in that he was convicted of a crime
16 substantially related to the qualifications, duties, and functions of a pharmacy technician. On
17 September 23, 2011, in a criminal proceeding entitled *People of the State of California v. Daniel*
18 *Murphy Davila, aka Daniel Jean Murphy, aka Daniel Jean Murphydavila*, in Riverside County
19 Superior Court, case number SWM10007778, Respondent was convicted on his plea of guilty to
20 violating Penal Code section 148(a)(1), willfully resisting/delaying/obstructing a peace officer, a
21 misdemeanor.

22 b. Respondent has subjected his license to discipline under Code sections 490 and
23 4301(l) of the Code in that he was convicted of a crime substantially related to the qualifications,
24 duties, and functions of a pharmacy technician. On March 19, 2015, in a criminal proceeding
25 entitled *People of the State of California v. Daniel Jean Paul Murphydavila*, in Los Angeles
26 County Superior Court, case number 5JB01336, Respondent was convicted on his plea of nolo
27 contendere to violating Vehicle Code section 23152(b), driving with a blood alcohol
28 concentration (BAC) of .08 or more, a misdemeanor. Respondent admitted, and the court found

1 true the special allegation that Respondent was previously convicted of the same offenses on
2 September 10, 2010 and September 23, 2011, within the meaning of Vehicle Code sections 23540
3 and 23546. (See paragraphs 16 and 17, below.)

4 c. Respondent has subjected his license to discipline under Code section 4301(h)
5 for unprofessional conduct in that on or about December 28, 2014, while on probation for a DUI
6 conviction on September 23, 2011, Respondent operated a motor vehicle while Substantially
7 impaired by alcohol and caused a collision, conduct that was dangerous and injurious to himself
8 and the public.

9 ORDER

10 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 72306, issued to
11 Respondent Daniel Jean-Paul Murphy, is revoked.

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

16 This Decision shall become effective at 5:00 p.m. on April 1, 2016.

17 It is so ORDERED March 2, 2016.

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19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 

23 By _____

24 Amy Gutierrez, Pharm.D.
25 Board President

26 81262602.DOC
27 DOJ Matter ID:SD2015802468

28 Attachment:
Exhibit A: Accusation

Exhibit A

First Amended Accusation

(DANIEL JEAN-PAUL MURPHY)

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10 **BEFORE THE**
BOARD OF PHARMACY
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 5625

14 **DANIEL JEAN-PAUL MURPHY**
40721 La Salle Place
15 Murrieta, CA 92563

FIRST AMENDED
ACCUSATION

16 Pharmacy Technician Registration
No. TCH 72306

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this First Amended Accusation solely in her
22 official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer
23 Affairs.

24 2. On or about October 24, 2006, the Board of Pharmacy issued Pharmacy Technician
25 Registration Number TCH 72306 to Daniel Jean-Paul Murphy (Respondent). The Pharmacy
26 Technician Registration was in full force and effect at all times relevant to the charges brought
27 herein and will expire on October 31, 2016, unless renewed.

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JURISDICTION

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

4. Section 4300(a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee 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.

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STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

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

8. Section 493 of the Code states:

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

1 discipline or to determine if the conviction is substantially related to the qualifications,
2 functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority," and
4 "registration."

5 9. Section 4301 of the Code states:

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

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

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

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:

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

- 1 (2) Total criminal record.
- 2 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 3 (4) Whether the licensee has complied with all terms of parole, probation,
- 4 restitution or any other sanctions lawfully imposed against the licensee.
- 5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

11 **COSTS**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(September 23, 2011 Criminal Conviction for Resisting Arrest on October 17, 2010)**

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

23 a. On September 23, 2011, in a criminal proceeding entitled *People of the State of*
24 *California v. Daniel Murphy Davila, aka Daniel Jean Murphy, aka Daniel Jean Murphydavila*, in
25 Riverside County Superior Court, case number SWM10007778, Respondent was convicted on his
26 plea of guilty to violating Penal Code section 148(a)(1), willfully resisting/delaying/obstructing a
27 peace officer, a misdemeanor.

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b. As a result of the conviction, Respondent was sentenced to serve 30 days in the custody of the Riverside County Sheriff, suspended pending successful completion of summary probation for 36 months. Respondent was ordered to complete 25 AA meetings or an approved alternative program, pay fines and fees, and comply with probation terms.

c. The facts that led to the conviction are that shortly after midnight, on or about October 17, 2010, a patrol deputy with the Riverside County Sheriff was flagged down by security guards outside of a Temecula restaurant. From a distance, the deputy observed the security officers order Respondent to leave the premises several times, but he refused. Respondent was verbally abusive towards the security officers, used obscene language, and attempted to reenter the restaurant. The deputy approached Respondent and explained that if he refused to leave the premises, he would be would be issued a citation for trespassing. Respondent became verbally abusive towards the deputy. As Respondent tried to reenter the restaurant, the deputy grabbed Respondent by the wrist. Respondent pulled away and squared himself towards the deputy as though he was going to attack. The deputy took Respondent to the ground. Respondent continued to ignore the deputy’s orders to stop resisting and place his hands behind his back. After receiving a distraction strike to the side of the head, Respondent quit resisting and was placed in handcuffs. Respondent refused medical attention at a local hospital and was issued a citation.

SECOND CAUSE FOR DISCIPLINE

(March 19, 2015 Criminal Conviction for DUI on December 28, 2014)

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

a. On March 19, 2015, in a criminal proceeding entitled *People of the State of California v. Daniel Jean Paul Murphydavila*, in Los Angeles County Superior Court, case number 5JB01336, Respondent was convicted on his plea of nolo contendere to violating Vehicle Code section 23152(b), driving with a blood alcohol concentration (BAC) of .08 or more, a misdemeanor. Respondent admitted, and the court found true the special allegation that

1 Respondent was previously convicted of same offenses on September 10, 2010 and September
2 23, 2011, within the meaning of Vehicle Code sections 23540 and 23546. (See paragraphs 16
3 and 17, below.) Pursuant to a plea agreement, the court dismissed an additional count of
4 violating Vehicle Code section 23152(a), driving under the influence.

5 b. As a result of the conviction, Respondent was sentenced to serve 150 days in
6 the Los Angeles County Jail, with pre-custody credit for 29 days, and he was placed on summary
7 probation for five years. Respondent was ordered to complete an 18-month licensed Second-
8 Offender Alcohol and Other Drug Education and Counseling Program, a Hospital and Morgue
9 Program, and a MADD Victim Impact Panel session, pay fines, fees and restitution to the victim,
10 and comply with the DUI probation terms, including a one-year suspension of his driver's
11 license.

12 c. The facts that led to the conviction are that on shortly after two a.m. on
13 December 28, 2014, the California Highway Patrol (CHP) was dispatched to a two-vehicle
14 collision in the vicinity of Rowland Heights. Upon arrival, the CHP officer made contact with
15 Respondent and the second driver (victim) involved in the collision. According to the victim, he
16 was traveling on SR-60 when he observed Respondent approaching from behind on his right side.
17 Without warning, Respondent veered into the victim's lane and side-swiped the victim's vehicle.
18 Upon contact with Respondent, the CHP officer observed that Respondent's eyes were red and
19 watery, there was a strong odor of alcohol on Respondent's breath and person, and his speech
20 was slow. Respondent submitted to a series of field sobriety tests which he was unable to
21 complete as explained and demonstrated by the CHP officer. Respondent agreed to provide a
22 breath sample using the preliminary alcohol screening device. Respondent inflated his cheeks,
23 held his breath, and failed to provide a sample on three attempts. Respondent was arrested for
24 driving under the influence. A blood sample provided by Respondent was analyzed with a BAC
25 of 0.17 percent.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Dangerous Use of Alcohol)**

3 15. Respondent has subjected his registration to disciplinary action under section 4301(h)
4 of the Code for unprofessional conduct in that on or about December 28, 2014, while still on
5 probation for a DUI conviction on September 23, 2011, Respondent operated a motor vehicle
6 while substantially impaired by alcohol and caused a collision, conduct that was dangerous and
7 injurious to himself and the public, as described in paragraph 14, above.

8 **DISCIPLINARY CONSIDERATIONS**

9 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
10 to California Code of Regulations, title 16, section 1769, Complainant alleges:

11 17. On September 16, 2010, in a criminal proceeding entitled *People of the State of*
12 *California v. Daniel Murphy Davila, aka Daniel Jean Murphy Paul, aka Daniel Jean*
13 *Murphydavila Paul*, in Riverside County Superior Court, case number SWM10005925,
14 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
15 driving under the influence, Vehicle Code section 23152(b), driving with a BAC of .08 or more,
16 and Vehicle Code section 14601.1(a), knowingly driving on a suspended license, misdemeanors.
17 As a result of the convictions, Respondent was granted summary probation for three years, and he
18 was committed to the custody of the Riverside County Sheriff's Labor Program for eight days.
19 Respondent was ordered to pay fees and fines, complete a four-month First Offender DUI
20 Program, and comply with DUI probation terms.

21 18. On September 23, 2011; in a criminal proceeding entitled *People of the State of*
22 *California v. Daniel Murphy Davila, aka Daniel Jean Murphy Paul, aka Daniel Jean*
23 *Murphydavila Paul*, in Riverside County Superior Court, case number SWM1106046,
24 Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a),
25 driving under the influence, Vehicle Code section 23152(b), driving with a BAC of .08 or more,
26 and Vehicle Code section 14601.1(a), knowingly drive on a suspended license, misdemeanors.
27 Respondent admitted, and the court found true, the special allegations that Respondent was
28 previously convicted of the same offense on September 16, 2010, and that the offense was

1 committed while his license was suspended for a previous DUI conviction. As a result of the
2 convictions, Respondent was granted summary probation for 48 months, and was committed to
3 the custody of the Riverside County Sheriff's Work Release Program for 44 days. Respondent
4 was ordered to pay fees and fines, complete an 18-month Drinking Drivers Program, and comply
5 with DUI probation terms.

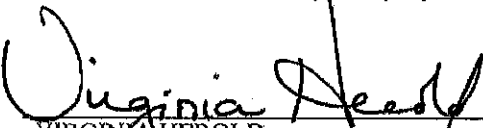
6 19. On August 31, 2012, the Board issued Citation and Fine No. CI 2011 48965 to
7 Respondent alleging that his conduct, as described in paragraphs 16 and 17, above, constituted
8 causes for discipline under Business and Professions Code section 4301(f) – acts of moral
9 turpitude, dishonesty, fraud, deceit or corruption; section 4301(h) – the use of alcoholic beverages
10 to the extent or in a manner as to be dangerous or injurious to oneself; section 4301(k) –
11 conviction of more than one misdemeanor involving the use, consumption, or self-administration
12 of an alcoholic beverage; and section 4301(l) – conviction of a crime substantially related to the
13 practice of pharmacy. Respondent complied with the citation on September 25, 2012.

14 **PRAYER**

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

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72306,
18 issued to Daniel Jean-Paul Murphy;
- 19 2. Ordering Daniel Jean-Paul Murphy to pay the Board of Pharmacy the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3;
- 22 3. Taking such other and further action as deemed necessary and proper.

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24 DATED: 1/21/16


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

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