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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. 5655

**RICHARD M. NUNEZ  
1615 D Street  
Sacramento, CA 95818**

**DEFAULT DECISION AND ORDER**

**Original Pharmacy Technician Registration  
No. TCH 114939**

[Gov. Code, §11520]

Respondent.

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FINDINGS OF FACT

1. On or about April 15, 2016, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5655 against Richard M. Nunez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 10, 2011, the Board of Pharmacy (Board) issued Original Pharmacy Technician Registration No. TCH 114939 to Respondent. The Original Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5655 and will expire on October 31, 2017, unless renewed.

3. On or about April 25, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5655, 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 section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is:

1615 D Street  
Sacramento, CA 95818.

1           4.     Service of the Accusation was effective as a matter of law under the provisions of  
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
3 124.

4           5.     On or about May 31, 2016, the aforementioned documents were returned by the U.S.  
5 Postal Service marked "Return to Sender Unable to Forward." The address on the documents was  
6 the same as the address on file with the Board. Respondent failed to maintain an updated address  
7 with the Board and the Board has made attempts to serve the Respondent at the address on file.  
8 Respondent has not made himself available for service and therefore, has not availed himself of  
9 his right to file a notice of defense and appear at hearing.

10          6.     Government Code section 11506(c) 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  
13 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense  
14 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its  
15 discretion may nevertheless grant a hearing.

16          7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
18 5655.

19          8.     California Government Code section 11520(a) states, in pertinent part:

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

24          9.     Pursuant to its authority under Government Code section 11520, the Board finds  
25 Respondent is in default. The Board will take action without further hearing and, based on the  
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
28 file at the Board's offices regarding the allegations contained in Accusation No. 5655, finds that  
the charges and allegations in Accusation No. 5655, are separately and severally, found to be true  
and correct by clear and convincing evidence.



1 c. Respondent is subject to disciplinary action pursuant to Code section 4301(k), in that  
2 Respondent was convicted of more than one misdemeanor involving the use, consumption, or  
3 self-administration of a dangerous drug and/or an alcoholic beverage. Specifically, Respondent  
4 has a criminal conviction for driving under the influence of alcoholic beverages and/or drugs, as  
5 set forth in paragraph a, above, and on or about December 12, 2000, in the case entitled *People v.*  
6 *Nunez*, Superior Court of California, County of Placer, Case No. 62-18518, Respondent was  
7 convicted by the court on his plea of guilty of violating Vehicle Code section 23152(a) (driving  
8 under the influence of alcohol), a misdemeanor.

9 d. Respondent is subject to disciplinary action pursuant to Code section 4301(j), in that  
10 on or about February 15, 2015, Respondent self-administered methamphetamine, a controlled  
11 substance, in violation of Health and Safety Code section 11170.

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ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 114939, heretofore issued to Respondent Richard M. Nunez, 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 at 5:00 p.m. on February 9, 2017.

It is so ORDERED on January 10, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By \_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

12348319.DOC  
DOJ Matter ID:SA2015105708

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 ELENA L. ALMANZO  
Deputy Attorney General  
4 State Bar No. 131058  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-5524  
Facsimile: (916) 327-8643  
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 Accusation Against:

Case No. 5655

12 **RICHARD M. NUNEZ**  
1615 D Street  
13 Sacramento, CA 95818

**ACCUSATION**

14 **Original Pharmacy Technician Registration**  
15 **No. TCH.114939**

Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Original Pharmacy Technician Registration**

22 2. On or about October 10, 2011, the Board issued Original Pharmacy Technician  
23 Registration Number TCH 114939 to Richard M. Nunez, also known as Richard Manuel Nunez  
24 ("Respondent"). The original pharmacy technician registration was in full force and effect at all  
25 times relevant to the charges brought herein and will expire on October 31, 2017, unless renewed.

26 **JURISDICTION**

27 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:

28 (a) Every license issued may be suspended or revoked.

1 (b) The board shall discipline the holder of any license issued by the board,  
2 whose default has been entered or whose case has been heard by the board and found  
3 guilty, by any of the following methods:

4 (1) Suspending judgment.

5 (2) Placing him or her upon probation.

6 (3) Suspending his or her right to practice for a period not exceeding one year.

7 (4) Revoking his or her license.

8 (5) Taking any other action in relation to disciplining him or her as the board in  
9 its discretion may deem proper . . .

10 4. Code section 4300.1 states:

11 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
12 by operation of law or by order or decision of the board or a court of law, the  
13 placement of a license on a retired status, or the voluntary surrender of a license by a  
14 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
15 investigation of, or action or disciplinary proceeding against, the licensee or to render  
16 a decision suspending or revoking the license.

#### 17 STATUTORY AND REGULATORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

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

28 (j) The violation of any of the statutes of this state, of any other state, or of the  
United States regulating controlled substances and dangerous drugs.

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

(l) 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



1 inquire into the circumstances surrounding the commission of the crime, in order to  
2 fix the degree of discipline or, in the case of a conviction not involving controlled  
3 substances or dangerous drugs, to determine if the conviction is of an offense  
4 substantially related to the qualifications, functions, and duties of a licensee under this  
5 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
6 contendere is deemed to be a conviction within the meaning of this provision. The  
7 board may take action when the time for appeal has elapsed, or the judgment of  
8 conviction has been affirmed on appeal or when an order granting probation is made  
9 suspending the imposition of sentence, irrespective of a subsequent order under  
10 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
11 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
12 dismissing the accusation, information, or indictment.

13 6. Health and Safety Code section 11170 states, "No person shall prescribe, administer,  
14 or furnish a controlled substance for himself."

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

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

#### 23 COST RECOVERY

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

#### 29 DRUG

30 9. *Methamphetamine* is a Schedule II controlled substance as designated by Health and  
31 Safety Code section 11055(d)(2).

#### 32 FIRST CAUSE FOR DISCIPLINE

33 (Criminal Conviction)

34 10. Respondent is subject to disciplinary action pursuant to Code section 4301(l), on the  
35 grounds of unprofessional conduct, in that Respondent committed a crime that is substantially

1 related to the qualifications, functions, and duties of a licensed pharmacy technician. Specifically,  
2 on or about May 6, 2015, in a criminal proceeding entitled *People v. Richard M. Nunez*, Superior  
3 Court of California, County of Sacramento, Case No. 15M04692, Respondent was convicted by  
4 the court on his plea of nolo contendere to violating Vehicle Code section 23152(f) (driving under  
5 the combined influence of drugs and alcohol), a misdemeanor. The circumstances of the crime are  
6 that on or about February 15, 2015, an officer with the Sacramento Police Department, having  
7 noted that a vehicle did not have operative tail lights, detained a vehicle. The officer further  
8 observed that Respondent, who was driving the vehicle, displayed objective signs of intoxication.  
9 Respondent was unable to perform field sobriety tests as explained and demonstrated.  
10 Respondent's breath and blood alcohol content was .06%, and he tested positive for  
11 methamphetamine.

12 **SECOND CAUSE FOR DISCIPLINE**

13 (Use of Alcoholic Beverages and a Dangerous Drug in a Dangerous or Injurious Manner)

14 11. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that  
15 on or about February 15, 2015, Respondent used an alcoholic beverage and a dangerous drug in a  
16 manner dangerous or injurious to himself and others. Specifically, Respondent drove a motor  
17 vehicle while under the influence of methamphetamine and alcohol, as more fully set forth in  
18 paragraph 10, above.

19 **THIRD CAUSE FOR DISCIPLINE**

20 (More Than One Conviction Involving Use, Consumption, or Self-Administration  
21 of a Dangerous Drug, Alcoholic Beverage, or Combination Thereof)

22 12. Respondent is subject to disciplinary action pursuant to Code section 4301(k), in that  
23 Respondent was convicted of more than one misdemeanor involving the use, consumption, or  
24 self-administration of a dangerous drug and/or an alcoholic beverage. Specifically, Respondent  
25 has a criminal conviction for driving under the influence of alcoholic beverages and/or drugs, as  
26 set forth in paragraph 10, above, and paragraph 14, below.

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**FOURTH CAUSE FOR DISCIPLINE**

(Self-Administration of a Controlled Substance)

13. Respondent is subject to disciplinary action pursuant to Code section 4301(j), in that on or about February 15, 2015, Respondent self-administered methamphetamine, a controlled substance, in violation of Health and Safety Code section 11170.

**MATTERS IN AGGRAVATION**

14. To determine the degree of discipline to be assessed against Respondent, if any, Complainant alleges that On or about December 12, 2000, in the case entitled *People v. Nunez*, Superior Court of California, County of Placer, Case No. 62-18518, Respondent was convicted by the court on his plea of guilty of violating Vehicle Code section 23152(a) (driving under the influence of alcohol), a misdemeanor. The circumstances of the crime are that on or about November 13, 2000, Respondent drove a vehicle while under the influence of alcohol. His blood alcohol content was .14%/.13%.

**PRAYER**

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

1. Revoking or suspending Original Pharmacy Technician Registration Number TCHI14939, issued to Richard M. Nunez, also known as Richard Manuel Nunez;
2. Ordering Richard M. Nunez, also known as Richard Manuel Nunez, 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

*4/15/16*

*Virginia Herold*

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

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