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

In the Matter of the Accusation Against:

Case No. 5681

**RAQUEL CABRERA
4560 North Avenue #1
San Diego, CA 92116**

DEFAULT DECISION AND ORDER

**Pharmacy Technician Registration No. TCH
92497**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 22, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 5681 against Raquel Cabrera (Respondent) before the Board of Pharmacy (Board). (Accusation attached as Exhibit A.)

2. On or about March 22, 2010, the Board issued Pharmacy Technician Registration No. TCH 92497 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5681, said license expired on December 31, 2015. This lapse in licensure, however, pursuant to Business and Professions Code section 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about January 13, 2016, Respondent was served by Certified and First Class Mail copies of Accusation No. 5681, Statement to Respondent, Notice of Defense, and Request for Discovery 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 4560 North Avenue #1 San Diego, CA 92116.

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 January 16, 2016, the aforementioned documents were returned by the
5 U.S. Postal Service marked "Unclaimed." The address on the documents was the same as the
6 address on file with the Board. Respondent failed to maintain an updated address with the Board.
7 The Board made attempts to serve the Respondent at the address on file. Respondent has not
8 made herself available for service and therefore, has not availed herself of her right to file a notice
9 of defense and appear at hearing.

10 6. On or about February 2, 2016, Respondent was re-served by Certified and First Class
11 Mail copies of Accusation No. 5681, Statement to Respondent, Notice of Defense, Request for
12 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
13 an alternate address: 3603 King Street, Apt. B, La Mesa, CA 91941. On or about February 4,
14 2016, the domestic return receipt reflecting service of the aforementioned documents via certified
15 mail was signed and returned.

16 7. Government Code section 11506(c) states, in pertinent part:
17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense . . . and the notice shall be deemed a specific denial of all
19 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense
20 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its
21 discretion may nevertheless grant a hearing.

22 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
23 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5681.

24 9. California Government Code section 11520(a) states, in pertinent part:
25 (a) If the respondent either fails to file a notice of defense . . . or to appear at
26 the hearing, the agency may take action based upon the respondent's express
27 admissions or upon other evidence and affidavits may be used as evidence without
28 any notice to respondent

 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

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board offices regarding the allegations contained in Accusation No. 5681, finds that the
3 charges and allegations in Accusation No. 5681, are separately and severally, found to be true and
4 correct by clear and convincing evidence.

5 11. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$470.00 as of May 5, 2016.

8 **DETERMINATION OF ISSUES**

9 1. Based on the foregoing findings of fact, Respondent Raquel Cabrera has subjected
10 her Pharmacy Technician Registration No. TCH 92497 to discipline.

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

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

15 a. Respondent has subjected her license to discipline under sections 490 and 4301,
16 subdivision (l) of the Code in that she was convicted of DUI and Felony Child Abuse on April 28,
17 2015, which is substantially related to the qualifications, duties, and functions of a pharmacy
18 technician.

19 b. Respondent has subjected her license to discipline under section 4301, subdivision (h)
20 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous or
21 injurious to herself and to the public, in that she operated a motor vehicle on April 28, 2015 while
22 significantly impaired by alcohol, with her two minor children in the vehicle.

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ORDER

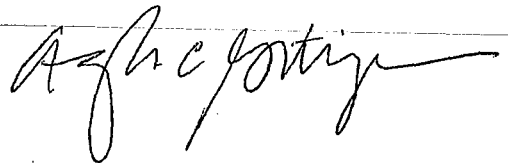
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 92497, heretofore issued to Respondent Raquel Cabrera, is revoked.

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 July 14, 2016.

It is so ORDERED on June 14, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

DOJ Matter ID:SD2015803068

Attachment:
Exhibit A: Accusation

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Attorneys for Complainant
8

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. 5681

13 **RAQUEL CABRERA**
14 **4560 North Avenue #1**
San Diego, CA 92116

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 92497**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about March 22, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 92497 to Raquel Cabrera (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2015, 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 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

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

12 **STATUTORY PROVISIONS**

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

17 7. Section 493 of the Code states:

18 Notwithstanding any other provision of law, in a proceeding conducted by a
19 board within the department pursuant to law to deny an application for a license or to
20 suspend or revoke a license or otherwise take disciplinary action against a person who
21 holds a license, upon the ground that the applicant or the licensee has been convicted
22 of a crime substantially related to the qualifications, functions, and duties of the
23 licensee in question, the record of conviction of the crime shall be conclusive
24 evidence of the fact that the conviction occurred, but only of that fact, and the board
25 may inquire into the circumstances surrounding the commission of the crime in order
26 to fix the degree of discipline or to determine if the conviction is substantially related
27 to the qualifications, functions, and duties of the licensee in question.

24 As used in this section, "license" includes "certificate," "permit," "authority,"
25 and "registration."

26 8. Section 4301 of the Code states:

27 The board shall take action against any holder of a license who is guilty of
28 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:

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

6 (l) The conviction of a crime substantially related to the qualifications,
7 functions, and duties of a licensee under this chapter. The record of conviction of a
8 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
9 States Code regulating controlled substances or of a violation of the statutes of this
10 state regulating controlled substances or dangerous drugs shall be conclusive
11 evidence of unprofessional conduct. In all other cases, the record of conviction shall
12 be conclusive evidence only of the fact that the conviction occurred. The board may
13 inquire into the circumstances surrounding the commission of the crime, in order to
14 fix the degree of discipline or, in the case of a conviction not involving controlled
15 substances or dangerous drugs, to determine if the conviction is of an offense
16 substantially related to the qualifications, functions, and duties of a licensee under this
17 chapter. A plea or verdict of guilty or a conviction following a plea of nolo
18 contendere is deemed to be a conviction within the meaning of this provision. The
19 board may take action when the time for appeal has elapsed, or the judgment of
20 conviction has been affirmed on appeal or when an order granting probation is made
21 suspending the imposition of sentence, irrespective of a subsequent order under
22 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
24 dismissing the accusation, information, or indictment. . . .

25 REGULATORY PROVISIONS

26 9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

27 When considering the suspension or revocation of a facility or a personal
28 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).

(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.

10. 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.

1 COSTS

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(August 18, 2015 Criminal Convictions for DUI & Felony Child Abuse on April 28, 2015)**

10 12. Respondent has subjected her license to discipline under sections 490 and 4301,
11 subdivision (l) of the Code in that she was convicted of crimes that are substantially related to the
12 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

13 a. On or about August 18, 2015, in a criminal proceeding entitled *People of the*
14 *State of California v. Raquel Cabrera*, in San Diego County Superior Court, case number
15 SCD262027, Respondent was convicted on her plea of guilty to violating Penal Code section
16 273a, subdivision (a), felony child abuse, and Vehicle Code section 23152, subdivision (a),
17 driving under the influence of alcohol/drugs, with a prior DUI within the previous 10 years, a
18 misdemeanor. Respondent admitted and the court found true the special allegation that her blood
19 alcohol concentration (BAC) was .15 percent or more, within the meaning of Vehicle Code
20 section 23578. Pursuant to a plea agreement, the court dismissed an additional count of violating
21 Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or more.

22 b. As a result of the conviction, Respondent was sentenced to serve 180 days in
23 jail, stayed pending successful completion of an outpatient treatment program. Respondent was
24 granted formal probation for five years, and ordered to complete a Multiple Conviction Program
25 and a 52-week Child Abuse Program. Respondent was ordered to complete all testing,
26 assessment, and treatment programs as directed by her probation officer, and comply with felony
27 probation terms as to alcohol and drug conditions, associations, reporting, and payment of fees,
28 fines, and restitution.

1 c. The facts that led to the convictions are that on or about the evening of April
2 28, 2015, the San Diego Police Department was dispatched to a report of a possible drunk driver
3 who collided with a signal light pole, and left the scene with two young children in the car.
4 Respondent then drove westbound in the eastbound lanes of traffic, and eventually stopped
5 approximately four blocks from the initial collision scene. Due to her complaints of pain,
6 Respondent was transported by paramedics to a trauma center. Upon arrival at the hospital, the
7 officer observed that Respondent's eyes were bloodshot and watery, her face and jaw were lax,
8 her speech was slurred, and she had an odor of alcohol on her breath. Respondent told the officer
9 that she regularly used Valium, and that she had taken "buzinga" that evening. A trauma nurse
10 stated that Respondent was trying to say "Vicodin." The officer observed the odor of marijuana
11 on Respondent's clothing. Respondent was uncooperative with the field sobriety tests. Based on
12 her objective symptoms of intoxication, the officer arrested Respondent for driving under the
13 influence of alcohol and/or drugs, and placing her children in danger. A blood sample taken from
14 Respondent was subsequently analyzed with a BAC of .33 percent. Respondent's two children,
15 seven and four years old, were held at the scene until a family member took custody.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Dangerous Use of Alcohol)**

18 13. Respondent has subjected her license to discipline under section 4301, subdivision (h)
19 of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous or
20 injurious to herself and to the public, in that she operated a motor vehicle on April 28, 2015 while
21 significantly impaired by alcohol, with her two minor children in the vehicle, and caused a
22 collision, as described in paragraph 12, above.

23 **DISCIPLINARY CONSIDERATIONS**

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

26 a. On or about January 9, 2006, in a criminal proceeding entitled *People of the*
27 *State of California v. Raquel Cabrera*, in San Diego County Superior Court, case number
28 C256353, Respondent was convicted on her plea of guilty to violating Vehicle Code section

1 23152, subdivision (a), driving under the influence of alcohol/drugs. Pursuant to a plea
2 agreement, the court dismissed an additional count of violating Vehicle Code section 23152,
3 subdivision (b), driving with a BAC of .08 percent or more.

4 b. As a result of the conviction, Respondent was sentenced to serve 180 days in
5 jail, stayed pending successful completion of five years summary probation. Respondent was
6 ordered to complete a three-month First Conviction Program and a MADD Victim Impact Panel
7 session, pay fees and fines, and comply with probation terms.

8 **PRAYER**

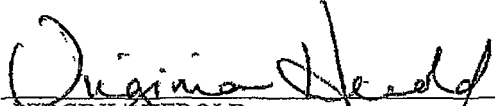
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 92497,
12 issued to Raquel Cabrera;

13 2. Ordering Raquel Cabrera to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;

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

17
18 DATED: 12/22/15


19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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