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

In the Matter of the Accusation Against:  
**YVETTE MUNIZ**  
**425 S. Conejo Avenue**  
**Modesto, CA 95354**  
**Original Pharmacy Technician Registration**  
**No. TCH 81903**  
  
Respondent.

Case No. 5682  
OAH No. 2016061136  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 12, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5682 against Yvette Muniz (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 13, 2008, the Board of Pharmacy (Board) issued Original Pharmacy Technician Registration No. TCH 81903 to Respondent. The Original Pharmacy Technician Registration will expire on October 31, 2017, unless renewed.

3. On or about May 17, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5682, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
2 is required to be reported and maintained with the Board. Respondent's address of record was  
3 and is:

4 Yvette Muniz  
5 425 S. Conejo Avenue  
6 Modesto, CA 95354.

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

10 5. On or about May 27, 2016, Respondent signed and returned a Notice of Defense,  
11 requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's  
12 address of record and it informed her that an administrative hearing in this matter was scheduled  
13 for September 26, 2016. Respondent failed to appear at that hearing.

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

20 7. California Government Code section 11520(a) states, in pertinent part:

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

25 8. Pursuant to its authority under Government Code section 11520, the Board finds  
26 Respondent is in default. The Board will take action without further hearing and, based on the  
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
28 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
file at the Board's offices regarding the allegations contained in Accusation No. 5682, finds that  
the charges and allegations in Accusation No. 5682, are separately and severally, found to be true  
and correct by clear and convincing evidence.



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ORDER

IT IS SO ORDERED that Original Pharmacy Technician Registration No. TCH 81903, heretofore issued to Respondent Yvette Muniz, 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 December 29, 2016.

It is so ORDERED on November 29, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

12454402.DOC  
DOJ Matter ID: SA2015105984

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(YVETTE MUNIZ)

1 KAMALA D. HARRIS  
Attorney General of California  
2 JANICE K. LACHMAN  
Supervising Deputy Attorney General  
3 LORRIE M. YOST  
Deputy Attorney General  
4 State Bar No. 119088  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 445-2271  
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:  
12 **YVETTE MUNIZ**  
425 S. Conejo Avenue  
13 Modesto, CA 95354  
14 **Original Pharmacy Technician Registration**  
15 **No. TCH 81903**  
16 Respondent.

Case No. 5682

**ACCUSATION**

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 2. On or about March 13, 2008, the Board issued Original Pharmacy Technician  
22 Registration Number TCH 81903 to Yvette Muniz ("Respondent"). The original pharmacy  
23 technician registration was in effect at all times relevant to the charges brought herein and will  
24 expire on October 31, 2017, unless renewed.

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1 JURISDICTION

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

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

12 4. Code section 4300.1 states:

13 The expiration, cancellation, forfeiture, or suspension of a board-issued license  
14 by operation of law or by order or decision of the board or a court of law, the  
15 placement of a license on a retired status, or the voluntary surrender of a license by a  
16 licensee shall not deprive the board of jurisdiction to commence or proceed with any  
17 investigation of, or action or disciplinary proceeding against, the licensee or to render  
18 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:

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

25 (l) The conviction of a crime substantially related to the qualifications,  
26 functions, and duties of a licensee under this chapter. The record of conviction of a  
27 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
28 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. California Code of Regulations, title 16, section 1770, states:

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

#### 21 COST RECOVERY

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

#### 28 FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

8. Respondent is subject to disciplinary action pursuant to Code section 4301(I), on the  
grounds of unprofessional conduct, in that Respondent committed crimes that are substantially  
related to the qualifications, functions, and duties of a licensed pharmacy technician, as follows:

a. On or about May 10, 2012, in the case entitled *People v. Yvette Muniz*, Superior Court  
of California, Stanislaus County, Case No. 1438496, Respondent was convicted by the court on  
her plea of nolo contendere of violating Vehicle Code section 23152(a) (driving under the  
influence of alcohol), a misdemeanor, with a blood alcohol level of .10%. Respondent was



1 sentenced to 36 months of informal probation, two days imprisonment, and fines and fees were  
2 levied against her. The circumstances of the crime are that on or about October 8, 2011,  
3 Respondent was detained by a California Highway Patrol officer who observed a vehicle weaving  
4 and being driven under the speed limit. When the officer detained the vehicle, he observed that  
5 Respondent, who was driving, had red and watery eyes. Respondent informed the officer that she  
6 had consumed two beers, and a shot of "Patron". Respondent was unable to perform field  
7 sobriety tests as instructed and demonstrated. A breath test was administered, revealing that  
8 Respondent's blood alcohol level was .11%/.11%.

9 b. On or about July 25, 2012, in the case entitled *People v. Yvette Muniz*, Superior Court  
10 of California, Stanislaus County, Case No. 1445900, Respondent was convicted by the court on  
11 her plea of guilty of violating Vehicle Code section 14601.2(a) (driving when privilege suspended  
12 or revoked for driving under the influence), a misdemeanor. Respondent was sentenced to 36  
13 months of probation, and fees and fines were levied against her. The circumstances of the crime  
14 are that on or about April 6, 2012, Respondent drove a vehicle when her privilege to do so was  
15 suspended for driving under the influence of alcohol.

#### 16 SECOND CAUSE FOR DISCIPLINE

17 (Use of Alcoholic Beverages in a Dangerous or Injurious Manner)

18 9. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that  
19 on or about October 8, 2011, Respondent used alcoholic beverages in a manner dangerous or  
20 injurious to herself and others, as more fully set forth in paragraph 8, subparagraph a, above.

#### 21 PRAYER

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

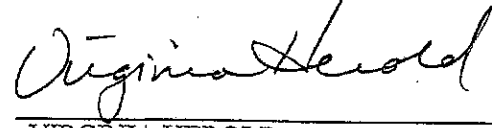
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 81903,  
25 issued to Yvette Muniz;

26 2. Ordering Yvette Muniz to pay the Board of Pharmacy the reasonable costs of the  
27 investigation and enforcement of this case, pursuant to Business and Professions Code section  
28 125.3; and,

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

DATED: 5/3/16



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

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