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

11
12 In the Matter of the Accusation Against:

Case No. 5775

13 **MARK ALBERT DUMAS**
14 **624 San Juhn Street**
Spring Valley, CA 91997

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 146620**

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 (Board), Department of Consumer Affairs.

23 2. On or about March 10, 2015, the Board issued Pharmacy Technician Registration
24 Number TCH 146620 to Mark Albert Dumas (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 March 31, 2017, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code (Code) unless otherwise
4 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 by
9 operation of law or by order or decision of the board or a court of law, the placement of a
10 license on a retired status, or the voluntary surrender of a license by a licensee shall not
11 deprive the board of jurisdiction to commence or proceed with any investigation of, or
12 action or disciplinary proceeding against, the licensee or to render a decision suspending
13 or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

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

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

24 8. Section 493 of the Code states:

25 Notwithstanding any other provision of law, in a proceeding conducted by a board
26 within the department pursuant to law to deny an application for a license or to suspend
27 or revoke a license or otherwise take disciplinary action against a person who holds a
28 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:

10

11 (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit,
12 or corruption, whether the act is committed in the course of relations as a licensee or
13 otherwise, and whether the act is a felony or misdemeanor or not.

14

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

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

12 COSTS

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

19 FIRST CAUSE FOR DISCIPLINE

20 (March 24, 2015 Criminal Conviction for Arson on January 8, 2015)

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

24 a. On or about March 24, 2015, in a criminal proceeding entitled *People of the*
25 *State of California v. Mark Albert Dumas*, in San Diego County Superior Court, case number
26 CD260424, Respondent was convicted on his plea of guilty to violating Penal Code section 455,
27 arson, a felony, a lesser-included offense of the original charge of violating Penal Code section
28 451, subdivision (c), arson of an inhabited building, which was dismissed with a plea agreement.

b. As a result of the conviction, on May 27, 2015, Respondent was sentenced to
serve 365 days in jail, stayed pending successful completion of formal probation for three years.
Respondent was ordered to complete 10 days in the Public Service Program, pay fees, fines, and

1 restitution to the victim, and comply with felony probation terms. Respondent is further required
2 to register as an arsonist with law enforcement, and to stay away from all adult bookstores.

3 c. The facts that led to the conviction are that on or about 8:35 a.m. on January 8,
4 2015, an unidentified person went to an adult bookstore and used a road flare to start a fire in one
5 of the viewing booths. After viewing video surveillance taken inside and outside of the
6 bookstore, detectives observed that the unidentified suspect drove up in a silver truck and
7 retrieved something from the back area of the truck's cab. The suspect then entered the adult
8 bookstore, went to a viewing booth, and closed the door. Within approximately one minute,
9 smoke is seen coming from the top of the booth. The suspect is videotaped hurriedly leaving the
10 bookstore, getting into his truck, and leaving the area. Detectives circulated photos of the suspect
11 and the truck to the bookstore's employees, as well as other adult bookstores in the area.
12 Employees recognized Respondent as a frequent customer who would patronize the bookstores
13 multiple times each week. Shortly after noon, on January 12, 2015, the San Diego Police
14 Department responded to the bookstore after an employee recognized Respondent and his
15 vehicle. Officers located Respondent in a viewing booth and placed him under arrest. While
16 being questioned by detectives with the Metro Arson Strike Team, Respondent confessed that he
17 could not stop his constant desire to go to adult bookstores. He set the fire in the booth hoping he
18 would be banned from the bookstore, thereby helping him change his habits.

19 SECOND CAUSE FOR DISCIPLINE

20 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

21 14. Respondent has subjected his registration to discipline under section 4301,
22 subdivisions (a) and (f) of the Code for unprofessional conduct in that his conduct, as described in
23 paragraph 13 above, involved moral turpitude, dishonesty, fraud and/or deceit.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 146620,
28 issued to Mark Albert Dumas;

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2. Ordering Mark Albert Dumas 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;

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

DATED: 6/10/16

Virginia Herold

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

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