BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: MINERVA P. GUZMAN 800 East Erna Avenue La Habra, CA 90631 Respondent.	Case No. 2841 OAH No. **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 15, 2005, Complainant, Patricia Harris, in her official capacity as the Executive Officer for the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2841 against Minerva P. Guzman (Respondent) before the Board of Pharmacy.

2. On or about November 17, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 31508 to Respondent. Said license will expire on May 31, 2005.

3. On or about April 21, 2005, Esther Leuzzi, an employee of the Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2841, Statement to Respondent, Notice of Defense, and Request for Discovery to Respondent's address of record

with the Board, which was and is 800 East Erna Avenue La Habra, CA 90631. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about April 21, 2005, the aforementioned documents were served and signed for by Respondent. A copy of the postal documents are attached hereto as exhibit B, and are incorporated herein by reference.

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

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2841.

8. California Government Code section 11520 states, in pertinent part:

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

9. 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 Respondent's express admissions by way of default and the evidence before it, contained in exhibits A, B and C, finds that the allegations in Accusation No. 2841 are true.

10. The total costs for investigation and enforcement are $2,085 as of May 24, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Minerva P. Guzman has subjected her Pharmacy Technician Registration No. TCH 31508 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Business & Professions Code section 4301(f), Unprofessional Conduct, Conviction for Theft on March 16, 2004; Unprofessional Conduct, Conviction for Theft on March 3, 2004; Unprofessional Conduct, Conviction for Theft on June 24, 2004; Unprofessional Conduct for Possession of Methamphetamine; Unprofessional Conduct for Violation of law; Unprofessional Conduct for Use of Methamphetamine; Conviction for crimes substantially related to her duties as a pharmacy technician; and Conduct that warrants the denial of a license.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 31508, heretofore issued to Respondent Minerva P. Guzman, 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 on July 28, 2005.

It is so ORDERED June 28, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

70023570.wpd
DOJ docket number:SD2005700069

By

STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2841, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents
Exhibit C: Declaration of Costs

Exhibit A

Accusation No. 2841,
Related Documents and Declaration of Service

BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: MINERVA P. GUZMAN 800 E Erna Avenue La Habra, CA 90631 Pharmacy Technician Registration No. TCH 31508 Respondent.	Case No. 2841 OAH No. **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about November 17, 1999, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 31508 to Minerva P. Guzman (Respondent). Said license will expire on May 31, 2005, unless renewed.

JURISDICTION

3. This 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 unless otherwise indicated.

4. Section 4301 of the Code states:

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

. . . .

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

. . . .

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

. . . .

(j) The violation of any of the statutes of this 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 inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a 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.

. . . .

(p) Actions or conduct that would have warranted denial of a license.

5. Section 4300 of the Code states:

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

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

(1) Suspending judgment.

(2) Placing him or her upon probation.

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

(4) Revoking his or her license.

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

6. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

Drugs Defined:

8. "Methamphetamine" is Schedule II controlled substance under Health and Safety Code section 11055(d)(2).

Alleged Facts:

March 16, 2004, Conviction for Petty Theft and Possession of Methamphetamine Orange County Superior Court Case No. 04NF0073

9. On January 4, 2004, Minerva P. Guzman, respondent, entered Wal-Mart located at 1340 South Beach Blvd. La Habra, California. Respondent took and later admitted to stealing five DVD movies by concealing them in her jacket and then placing the jacket in her purse. Later, she removed her jacket from her purse and left the five concealed DVDs in her purse.

10. Respondent then went into the Wal-Mart ladies bathroom and removed the security devices from the DVDs. Respondent then selected a child's doll and paid for it. Respondent left Wal-Mart without paying for the DVD movies she concealed in her purse.

11. Following her arrest for the theft of five DVDs, respondent admitted that she had approximately $40 of methamphetamine in her possession. Respondent told the arresting police officer that she uses methamphetamine twice a week. She also told the police officer that $40 worth of methamphetamine would last her about two weeks.

12. On or about January 9, 2004, respondent was charged in Superior Court case no. 04NF0073 in *The People v. Minerva Guzman* with count one for violation of Health & Safety Code section 11377(a), Possession of a Controlled Substance, a felony, and count two for violation of Penal Code section 484(a)-488, Petty Theft, a misdemeanor.

13. On or about March 16, 2004, respondent entered a plea of guilty as to counts one and two referenced above. As to count one, possession of methamphetamine, respondent was ordered into the drug diversion program pursuant to Penal Code section 1000. If respondent completes the diversion program and complies with her probation, she is eligible to have the felony dismissed on February 28, 2006. As to count two, respondent was convicted and sentenced to three years probation under strict conditions to obey all laws.

March 3, 2004, Conviction for Petty Theft; Los Angeles County Superior Court Case No. 4WH01063

14. On February 27, 2004, the Whittier California Police Department was dispatched to Wal-Mart located at 13310 Telegraph Road, Santa Fe Springs, California. While at Wal-Mart, respondent took and concealed one woman's dress, two DVD's and a pack of batteries into her purse. Thereafter, respondent went to the cashier and paid for an unrelated item and left the store. Wal-Mart security personnel stopped respondent for shop lifting outside the store.

15. Wal-Mart security recovered the two DVDs, a burgundy colored woman's dress and batteries. The UPC bar codes had been cut of the DVDs. Based upon the information provided, Whittier police placed respondent under arrest and gave respondent her Miranda warnings. Thereafter, respondent told the officer that she had two dollars and came to the store to get some DVDs for her children. The officer asked respondent how she was going to pay for the DVDs and respondent answered that she was not going to pay for them. Respondent told the officer that she planned to steal these items before she entered the store. Respondent told the officer that she took the DVDs into the bathroom and cut out the UPC bar codes with a razor blade. Thereafter, respondent flushed the bar codes down the toilet. Respondent told the officer

/

that she went to the checkout counter and purchased a bottle of Gatorade. She was later detained by store security.

16. Respondent told the officer that she had been arrested for petty theft and narcotics violations two months earlier and that she spent two nights in jail.

17. On March 1, 2004, the Los Angeles District Attorney filed a two count misdemeanor complaint in *The People v. Minerva Guzman*. The first count alleged a violation of Penal Code section 459, second degree commercial burglary; the second count alleged a violation of Penal Code section 484(a), petty theft.

18. On March 2, 2004, respondent was convicted on her plea of nolo contendere to count one, second degree commercial burglary; count two, petty theft, was dismissed per the plea agreement. Respondent served seven days in jail and paid court costs.

June 24, 2004, Conviction for Petty Theft; Orange County Superior Court Case No. FPD 04-9644

19. On June 24, 2004, the Fullerton Police Department was dispatched to Mervyns at 202 East Imperial Highway, Fullerton, CA. While at Mervyns, Respondent went to the Jewelry Dollar section and selected three Gloria Vanderbilt watch/bracelet sets. She returned one of the sets; respondent wrapped the other two sets of Gloria Vanderbilt watch/bracelets inside a newspaper. Respondent left the store with the two sets of watch/bracelets but was stopped by store security outside the store.

20. The Mervyns security officer recognized respondent from the prior day, June 23, 2004, wherein respondent had asked a clerk to hold her shopping bag while respondent took a cigarette break outside. Respondent never returned for her bag and the security officer asked the clerk to check inside respondent's bag. The clerk found inside respondent's bag a jewelry box that should have contained a watch and bracelet, but instead it was empty.

21. Following her detention in Mervyns, Fullerton Police interviewed respondent incident to her arrest. Following her Miranda warnings, Respondent admitted that she took the watch on June 23, 2004. Respondent took the stolen watch off and gave it to Mervyns security personnel. The Fullerton Police noted that at the time of respondent's arrest,

she had no credit cards and less than two dollars in cash in her possession. With respect to the two stolen sets of watch/bracelets, respondent told the police that she took three sets of the watch/bracelets from the display but only returned one set to the display. The other two sets of watch/bracelets she admitted to taking from the store. Respondent told the officer that she had an internal struggle where one side of her wanted to return the items and the other side wanted to take them. She decided to take them.

22. On June 28, 2004, the Orange County District Attorney filed a criminal complaint number FPD 04-9644 in *The People v. Minerva Guzman* alleging two counts of violating Penal Code section 666/484(a)/488, theft with a prior conviction, a misdemeanor. On July 12, 2004, respondent was convicted of a misdemeanor on her guilty plea for two counts of theft with a prior.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Conviction for Theft)

23. Respondent is subject to disciplinary action under section 4301(f) for her first arrest for theft resulting in her March 16, 2004 theft conviction as set forth in paragraphs 9 through 13 above.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Conviction for Theft)

24. Respondent is subject to disciplinary action under section 4301(f) for her second arrest for theft resulting in her March 3, 2004 theft conviction as set forth in paragraphs 14 through 18 above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Conviction for Theft)

25. Respondent is subject to disciplinary action under section 4301(f) for her third arrest for theft resulting in her June 24, 2004 theft conviction as set forth in paragraphs 19 through 22 above.

/

/

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Possession of Methamphetamine)

26. Respondent is subject to disciplinary action under section 4301(h) for use/possession of methamphetamine related to respondent's March 14, 2004 arrest for possession and use of methamphetamine in violation of Health & Safety Code section 11377(a) as set forth in paragraphs 9 through 13 above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct for Violation of Law)

27. Respondent is subject to disciplinary action under section 4301(j) in that Respondent was arrested for possession of methamphetamine and violating Health & Safety Code section 11377(a), a felony as set forth in paragraphs 9 through 13 above.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct; Use of Methamphetamine)

28. Respondent is subject to disciplinary action under section 4301(k) for ingestion of methamphetamine related to respondent's March 14, 2004 arrest for possession of methamphetamine in violation of Health & Safety Code section 11377(a) as set forth in paragraphs 9 through 13 above.

SEVENTH CAUSE FOR DISCIPLINE

(Conviction for Crime Substantially Related to Duties)

29. Respondent is subject to disciplinary action under section 4301(l) for multiple, three, convictions for Petty Theft and her arrest for possession of methamphetamine as set forth in paragraphs 9 through 22 above.

EIGHTH CAUSE FOR DISCIPLINE

(Conduct that Warrants Denial of a License)

30. Respondent is subject to disciplinary action under section 4301(p) for her criminal convictions related to three instances of petty theft and one felony possession of methamphetamine which constitutes conduct that would have warranted the denial of a pharmacy technician's license as set forth in paragraphs 9 through 22 above.

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 Pharmacy Technician Registration No. TCH 31508, issued to Minerva P. Guzman.

2. Ordering Minerva P. Guzman 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: 4/15/05

P. J. Harris

PATRICIA HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2005700069
Accusation draft 1.wpd

DECLARATION OF SERVICE BY CERTIFIED MAIL AND FIRST CLASS MAIL
(Separate Mailings)

Case Name: **In the Matter of the Accusation Against: Guzman, Minerva P.**
Case No.: 2841

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On April 21, 2005, I served the attached **Statement to Respondent, Accusation, Notice of Defense (2 copies), Request for Discovery, and Discovery Statutes** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **Statement to Respondent, Accusation, Notice of Defense (2 copies), Request for Discovery, and Discovery Statutes** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at San Diego addressed as follows:

MINERVA P. GUZMAN
800 E. Erna Avenue
La Habra, CA 90631
Certified Mail Receipt No. 7000 0520 0025 1945 7410

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 21, 2005, at San Diego, California.

Esther Leuzzi
Declarant

Esther Leuzzi
Signature

70019227.wpd

cc: Board of Pharmacy - Sacramento (Statement to Respondent)

Exhibit B

Postal Return Documents

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

Acc PKT

Postage $
Certified Fee
Return Receipt Fee (Endorsement Required)
Restricted Delivery Fee (Endorsement Required)
Total Postage & Fees $

4-21-05

Postmark Here

MINERVA P GUZMAN
800 E ERNA AVENUE
LA HABRA, CA 90631

7000 0520 0025 1945 7410

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits. Acc PKT

1. Article Addressed to:

MINERVA P GUZMAN
800 E ERNA AVENUE
LA HABRA CA 90631

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X [signature] ☐ Agent ☐ Addressee

B. Received by (Printed Name) Esiquel Guzman
C. Date of Delivery 4-23

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7000 0520 0025 1945 7410

PS Form 3811, August 2001 Domestic Return Receipt 102595-01-M-2509

Exhibit C

Certification of Costs

BILL LOCKYER, Attorney General
of the State of California
JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
California Department of Justice
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2105
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: MINERVA P. GUZMAN Respondent.	Case No. 2841 OAH No. **CERTIFICATION OF COSTS: DECLARATION OF JAMES M. LEDAKIS** [Business and Professions Code section 125.3]

I, JAMES M. LEDAKIS, hereby declare and certify as follows:

1. I am a Deputy Attorney General employed by the California Department of Justice (DOJ), Office of the Attorney General (Office). I am assigned to the Licensing Section in the Civil Division of the Office. I have been designated as the representative to certify the costs of prosecution by DOJ and incurred by the Board of Pharmacy in this case. I make this certification in my official capacity and as an officer of the court.

2. I represent the Complainant, Patricia Harris, Executive Officer for the Board of Pharmacy, in this action. I was assigned to handle this case on or around February 1, 2005.

3. As the Deputy Attorney General assigned to handle this case, I performed a wide variety of tasks that were necessary for the prosecution of this matter, including, but not

limited to (1) conducting an initial case evaluation; (2) obtaining, reading and reviewing the investigative material and requesting further investigation, as needed; (3) drafting pleadings, subpoenas, correspondence, memoranda, and other case-related documents; (4) researching relevant points of law and fact; (5) locating and interviewing witnesses and potential witnesses; (6) consulting and/or meeting with colleague deputies, supervisory staff, experts, client staff, and investigators; (7) communicating and corresponding with Minerva P. Guzman; (8) providing and requesting discovery; (9) preparing for and attending trial setting, status, prehearing and settlement conferences, as required, and (10) preparing for hearing.

4. I am personally familiar with the time recording and billing practices of DOJ and the procedure for charging the client agency for the reasonable and necessary work performed on a particular case. Whenever work is performed on a case, it is the duty of the employee to keep track of the time spent and to report that time on DOJ time sheets at or near the time of the tasks performed. Based upon the time reported through May 26, 2005, DOJ has billed or will bill the Board for the following amount of time spent working on the above entitled case.

Employee/ Position	Fiscal Year	No. of Hours	Hourly Rate	Total Charges
James M. Ledakis Deputy Attorney General	2005	15.00	139	2,085.00
			TOTAL:	$2,085.00

5. To the best of my knowledge the items of cost set forth in this certification are correct and were necessarily incurred in this case.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 26, 2005, in the City of San Diego, California.

James M. Ledakis

JAMES M. LEDAKIS