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of the State of California
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: BRANDY HERNANDEZ 3312 M Street, #5 Merced, CA 95348 Board of Pharmacy No. TCH 43584 Respondent.	Case No. 2933 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 29, 2006, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), filed Accusation No. 2933 against Brandy Hernandez (Respondent).

2. On or about August 27, 2002, the Board issued Pharmacy Technician License No. TCH 43584 to Respondent. The license was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

3. On or about July 13, 2006, Elsa Beas Valdez, an employee of the Department of Justice, served by Certified Mail and First Class Mail a copy of the Accusation No. 2933, Statement to Respondent, Notice of Defense, Request for Discovery, and Government

Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board at the time, which was 24268 Silva Avenue, #14, Hayward, CA 94544. On or about August 8, 2006, said documents were returned by the U.S. Postal Service marked "Unclaimed," and "Forwarding Order Expired." In July of 2006, the Respondent changed her address of record with the Board, which was and is 3312 M Street, #5, Merced, CA 95348. On or about August 23, 2006, Elsa Beas Valdez, an employee of the Department of Justice, served by Certified Mail and First Class Mail a copy of the Accusation No. 2933, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of Records, which was and is 3312 M Street, #5, Merced, CA 95348. On or about September 18, 2006, the Certified Mail service was returned by the U.S. Postal Service marked "Unclaimed." The Accusation and related documents, and Declaration of Service are attached as exhibit A, and are incorporated herein by reference. A copy of the postal returned documents are attached hereto as exhibit B, 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. 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."

6. 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. 2933.

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7. 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."

8. Pursuant to its authority under Government Code section 11520, the Director 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. 2933 are true.

9. The total costs for investigation and enforcement are $1,251.75s as of October 27, 2006.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Brandy Hernandez has subjected her Pharmacy Technician License No. TCH 43584 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 is authorized to revoke Respondent's Pharmacy Technician license based upon the following violations alleged in the Accusation:

a. On or about January 27, 2005, Respondent was convicted of violation of Health and Safety Code section 11550 (being under the influence of a controlled substance - methamphetamine).

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 43584, heretofore issued to Respondent Brandy Hernandez, 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 December 29, 2006.

It is so ORDERED November 29, 2006

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

80098310.wpd
DOJ docket number:SD2005800161

Attachments:

Exhibit A: Accusation No.2933, Related Documents, and Declaration of Service
Exhibit B: Postal Return Documents
Exhibit C: Declaration of Costs

Exhibit A

Accusation No. 2933,
Related Documents and Declaration of Service

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Attorneys for Complainant

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

In the Matter of the Accusation Against: **BRANDY GINNALE HERNANDEZ** 24268 Silva Avenue, #14 Hayward, CA 94544 License TCH No. 43584 Respondent.	Case No. 2933 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 27, 2002, the Board of Pharmacy issued License No. TCH Number 43584 to Brandy Ginnale Hernandez (Respondent). Said license was in full force and effect at all times relevant to the charges alleged herein and will expire on September 30, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board) under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 of the Code states:

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

". . . ."

5. 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.

". . . .

"(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."

6. Section 118, subdivision (b), of the Code provides that the expiration or surrender of a license shall not deprive the 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.

8. Section 490 of the Code states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction

following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

9. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

10. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a 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 discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

11. Respondent is subject to disciplinary action under sections 492, 4301(f), 4301(h), and 4301(j) of the Code in that on or about March 18, 2005, in a proceeding entitled People vs. Brandy Ginnale Hernandez, Orange County Superior Court Case No. 05CM01299 M A, Respondent plead guilty to a violation of Health and Safety Code section 11550 (Under the Influence of a Controlled Substance - Methamphetamine). The circumstances are as follows:

A. On or about January 27, 2005, Tustin Police Department officers responded to a disturbance call at a Chevron Gas Station. It was reported by citizen callers that a stabbing had taken place and that one subject was hitting another subject in the face. Upon arrival by police officers, it was determined that no stabbing had taken place. Three people were involved in the disturbance, two females and one male. The male reported to officers that his wife and niece (Respondent) were "arguing." Officers made contact with Respondent inside the Chevron gas station. Respondent had her children, ages 8 months and 22 months, with her. Officers asked Respondent to step outside.

After certain field tests were conducted by officers of Respondent, officers determined that Respondent was under the influence of methamphetamine. Officers also found drug paraphernalia consisting of two methamphetamine smoking pipes in Respondent's purse. Respondent was taken into custody and her children were picked up by a family member.

B. Defendant was ordered to enroll in a PC 1000 Drug Diversion Program. Deferred entry of judgment was stayed to April 18, 2005, for proof of enrollment in said program. On May 16, 2005, the Court found Respondent failed to show proof of enrollment. Sentencing was scheduled for June 6, 2005, and Respondent failed to appear at sentencing, at which time a warrant was issued for Respondent's arrest.

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On March 9, 2006, the Court read and considered correspondence from Respondent dated February 22, 2006. The Court ordered the warrant recalled and authorized Respondent to complete a PC 1000 program in Merced County. Deferred entry of judgment pursuant to PC 1000 was reinstated and Respondent was ordered to re-enroll in a Drug Diversion Program. Sentencing regarding completion of the Drug Diversion Program is set for September 5, 2006, at which time Respondent must appear before the Court.

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:

A. Revoking or suspending License TCH Number 43584, issued to Brandy Ginnale Hernandez

B. Ordering Brandy Ginnale Hernandez 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;

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

DATED: 6/29/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
State of California
Complainant

SD2005800161

70052374.wpd

Exhibit B

Postal Return Documents

CERTIFIED MAIL

7160 3901 9849 5489 6982

RETURN RECEIPT REQUESTED

ATTORNEY GEN...
SAN D...

2006 SEP 18 AM 11:20

$07.040
06/23/2006
US POSTAGE

AUG 15 2006

1st Notice
2nd Notice
Return

8-30
9-9

From:

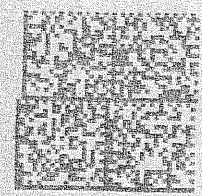
Blanca I. Lopez, Senior Legal Analyst
Office of the Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

To:

Brandy Hernandez
3312 M Street, #5
Merced, CA 95348

RETURNED TO SENDER
UNCLAIMED

RETURNED TO SENDER
UNCLAIMED



Hasler

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07/13/2006
Mailed From 92101
US POSTAGE

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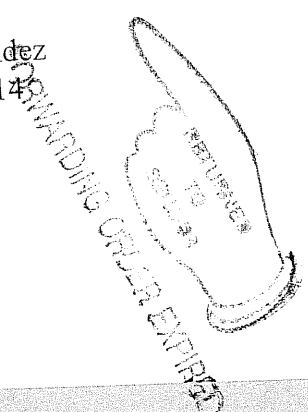
DEPARTMENT OF JUSTICE
Office of the Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

TO

Brandy Ginnale Hernandez
24268 Silva Avenue, #14
Hayward, CA 94544



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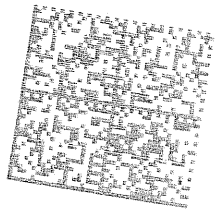
RETURN RECEIPT REQUESTED



Hasler

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Mailed From

US POST

DEPARTMENT OF JUSTICE
Office of the Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

TO

Brandy Ginnale Hernandez
24268 Silva Avenue, #14
Hayward, CA 94544

UNCLAIMED / REFUSED

JUL 17 2006

NOTIFIED
FINAL NOTICE
RETURNED AUG 01 2006

Extra 8306

7160 3901 9849 3221 2490

RETURN RECEIPT REQUESTED

016H26502775

Hasler

$06.80

07/13/2006

Mailed From 92101

US POSTAGE

DEPARTMENT OF JUSTICE

Office of the Attorney General
110 West "A" Street, Suite 1100
San Diego, California 92101

TO

Brandy Ginnale Hernandez
24268 Silva Avenue, #14
Hayward, CA 94544

UNCLAIMED / REFUSED

JUL 17 2006

NOTIFIED
FINAL NOTICE
RETURNED AUG 01 2006

extra 8306

Exhibit C

Certification of Costs

BILL LOCKYER, Attorney General
of the State of California
MARGARET A. LAFKO, Supervising Deputy Attorney General
Supervising Deputy Attorney General

Attorneys for Complainant

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

In the Matter of the Accusation Against: BRANDY HERNANDEZ Respondent.	Case No. 2933 **CERTIFICATION OF COSTS: DECLARATION OF BLANCA I. LOPEZ** [Business and Professions Code section 125.3]

I, BLANCA I. LOPEZ, hereby declare and certify as follows:

1. I am a Senior Legal Analyst employed by the California Department of Justice, Office of the Attorney General. 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 F. Harris, Executive Officer of the Board of Pharmacy, in this action. I was assigned to handle this case on or around October 7, 2005.

3. As the Senior Legal Analyst 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; and (8) communicating and corresponding with Brandy Hernandez.

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 October 27, 2006, 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
Margaret A. Lafko Supervising Deputy Attorney General	2005-2006	0.50	146	73.00
Blanca Lopez Senior Legal Analyst	2005-2006	6.50	92	598.00
Blanca Lopez Senior Legal Analyst	2006-2007	5.75	101	580.75
			TOTAL:	$1,251.75

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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 October 27, 2006 in the City of San Diego, California.

Blanca Lopez

BLANCA I. LOPEZ
Senior Legal Analyst

Declarant

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SD2005800161