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7

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

11 In the Matter of the Accusation Against:

12 MELIK MAILYAN
P.O. Box 4302
13 Burbank, CA 91503
Pharmacy Technician Registration No. TCH
14 14727

15 Respondent.

Case No. 3128

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16
17 FINDINGS OF FACT

18 1. On or about April 10, 2008, Complainant Virginia Herold, in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
20 filed Accusation No. 3128 against Melik Mailyan (Respondent) before the Board of Pharmacy.

21 2. On or about December 27, 1994, the Board of Pharmacy (Board) issued
22 Pharmacy Technician Registration No. TCH 14727 to Respondent. The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 expired on August 31, 2008.

25 3. On or about April 15, 2008, S. Reyes, an employee of the Department of
26 Justice, served by Certified and First Class Mail a copy of the Accusation No. 3128, Statement to
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

28 ///

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:
2 P.O. Box 4302
3 Burbank, CA 91503.

4 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

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

7 5. Government Code section 11506 states, in pertinent part:

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

13 6. Respondent failed to file a Notice of Defense within 15 days after service
14 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
15 Accusation No. 3128.

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

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

21 8. Pursuant to its authority under Government Code section 11520, the Board
22 finds Respondent is in default. The Board will take action without further hearing and, based on
23 the evidence on file herein, finds that the allegations in Accusation No. 3128 are true.

24 9. The total cost for investigation and enforcement in connection with the
25 Accusation are \$2,843.25 as of February 10, 2009.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Melik Mailyan has
28 subjected his Pharmacy Technician Registration No. TCH 14727 to discipline.

1. A copy of the Accusation is attached.

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

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

- 1 a. Business and Professions Code sections 490 and 430(1), California
2 Code of Regulations, title 16 § 1770, (conviction of a substantially related crime).
3 b. Business and Professions Code § 4301(f) and (o), (acts involving
4 moral turpitude, dishonesty, fraud, deceit, or corruption.
5 c. Business and Professions Code section 4301(o), unprofessional
6 conduct.

7 ORDER

8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 14727,
9 heretofore issued to Respondent Melik Mailyan, is revoked.


10 Respondent Melik Mailyan is ordered to pay \$2,843.25 in cost recovery to the
11 Board.

12 Pursuant to Government Code section 11520, subdivision (c), Respondent may
13 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
14 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
15 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
16 statute.

17 This Decision shall become effective on May 27, 2009.

18 It is so ORDERED April 27, 2009

19
20 BOARD OF PHARMACY
21 DEPARTMENT OF CONSUMER AFFAIRS
22 STATE OF CALIFORNIA

23 By 
24 KENNETH H. SCHELL
25 Board President

24 50382069.wpd
25 DOJ docket number:LA2007601870

26 Attachment:
27 Exhibit A: Accusation No.3128

28

Exhibit A
Accusation No. 3128

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

11 In the Matter of the Accusation Against:

Case No. 3128

12 MELIK MAILYAN
13 PO Box 4302
14 Burbank, CA 91503

ACCUSATION

14 Pharmacy Technician Registration No. TCH 14727

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

22 2. On or about December 17, 1994, the Board issued Pharmacy Technician
23 Registration No. TCH 14727 to Melik Mailyan (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on August 31, 2008, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board, under the authority of the
28 following laws. All Section references are to the Business and Professions Code unless

1 otherwise indicated.

2 4. Section 4300, subdivision (a), states that "[e]very license issued may be
3 suspended or revoked."

4 5. Section 490 states:

5 "A board may suspend or revoke a license on the ground that the licensee has
6 been convicted of a crime, if the crime is substantially related to the qualifications, functions, or
7 duties of the business or profession for which the license was issued. A conviction within the
8 meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo
9 contendere. Any action which a board is permitted to take following the establishment of a
10 conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has
11 been affirmed on appeal, or when an order granting probation is made suspending the imposition
12 of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the
13 Penal Code."

14 6. Section 4301 states, in pertinent part:

15 "The board shall take action against any holder of a license who is guilty of
16 unprofessional conduct or whose license has been procured by fraud or misrepresentation or
17 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the
18 following:

19
20 "(f) The commission of any act involving moral turpitude, dishonesty, fraud,
21 deceit, or corruption, whether the act is committed in the course of relations as a licensee or
22 otherwise, and whether the act is a felony or misdemeanor or not.

23
24 "(l) The conviction of a crime substantially related to the qualifications, functions,
25 and duties of a licensee under this chapter. . . .

26
27 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or
28 abetting the violation of or conspiring to violate any provision or term of this chapter or of the

1 applicable federal and state laws and regulations governing pharmacy, including regulations
2 established by the board. . . .”

3 7. California Code of Regulations, title 16, section 1770, states:

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

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

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Conviction of Substantially Related Crime)

20 10. Respondent is subject to disciplinary action under Sections 490 and 4301,
21 subdivision (l), as defined in California Code of Regulations, title 16, section 1770, on the
22 grounds of unprofessional conduct, in that on or about November 1, 2004, Respondent was
23 convicted of a crime substantially related to the qualifications, functions or duties of a licensed
24 pharmacy technician as follows:

25 a. On or about November 1, 2004, in a criminal proceeding entitled *United*
26 *States of America v. Melik Mailyan* in United States District Court, Central District of California,
27 Case No. CR 01-985-MMM, Respondent was convicted and sentenced on his plea of *guilty* to
28 violating 42 U.S.C. § 1320a-7b (illegal remunerations), a felony. Respondent was sentenced to

1 three (3) years probation pursuant to terms and conditions, and ordered to pay a special
2 assessment fee of \$300,000. On November 19, 2004, the Court issued Judgment and
3 Commitment to the U.S. Marshal for Respondent.

4 b. On December 10, 2001, a Plea Agreement for Defendant Melik Mailyan
5 was filed with the court which contained a statement of facts, 2:22-12, as follows:

6 "For the entire time from April 2000 to and including August 2000, defendant was
7 the owner of Americare Medical Supplies, ("Americare"), in Los Angeles, California. Americare
8 was a provider of durable medical equipment ("DME"). For Medi-Cal and Medicare eligible
9 beneficiaries, Americare would bill Medi-Cal and/or Medicare for the costs of DME provided to
10 beneficiaries. Both Medi-Cal and Medicare are (and were at the time) federal health care
11 programs in that each is funded in substantial part with federal monies.

12 "In or about April 2000, defendant Melik Mailyan met with an employee of
13 Western Comprehensive Care ("WCC") to discuss a business arrangement. Unknown to
14 defendant, the employee was an undercover Federal Bureau of Investigation Special Agent, and
15 WCC was an undercover facility operated by the FBI. During the meetings, defendant agreed
16 that he would pay the undercover agent for durable medical equipment referrals (defendant stated
17 that he would not call the payments "kickbacks").

18 "Subsequently, pursuant to their agreement, defendant paid the undercover
19 employee kickbacks on three different occasions, including \$200 on June 23, 2000, \$160 on
20 July 24, 2000, and \$125 on August 21, 2000. In total, defendant paid approximately \$485 in
21 kickbacks. At the time of the payments, defendant was aware that to make such payments was in
22 violation of the law."

23 SECOND CAUSE FOR DISCIPLINE

24 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

25 11. Respondent is subject to disciplinary action under Section 4301,
26 subdivisions (f) and (o), on the grounds of unprofessional conduct, in that Respondent committed
27 acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth above in
28 paragraph 10, inclusive.

