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6 Attorneys for Complainant
7

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 ADRIAN IRIARTE
1524 21st Street
13 Oceano, CA 93445
14 Pharmacy Technician Registration No. TCH 62634
15 Respondent.

Case No. 3203

OAH No.

**DEFAULT DECISION
AND ORDER**

[Gov. Code, §11520]

16 FINDINGS OF FACT

17 1. On or about November 12, 2008, Complainant Virginia Herold, in her official
18 capacity as the Executive Officer of the Board of Pharmacy (Board), filed Accusation No. 3203
19 against Adrian Iriarte (Respondent) before the Board.

20 2. On or about August 22, 2005, the Board issued Pharmacy Technician
21 Registration No. TCH 62634 to Respondent. The Pharmacy Technician Registration was in full force
22 and effect at all times relevant to the charges brought herein and will expire on July 31, 2009, unless
23 renewed.

24 3. On or about November 20, 2008, Rebeca Garcia, an employee of the
25 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No. 3203,
26 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections
27 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:
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1 which was and is: 1524 21st Street, Oceano, CA 93445. A copy of the Accusation is attached as
2 Exhibit A, and is incorporated herein by reference.

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

5 5. On or about November 20, 2008, the aforementioned documents were
6 returned by the U.S. Postal Service marked "Unclaimed."

7 6. 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
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

11 7. Respondent failed to file a Notice of Defense within 15 days after service
12 upon him of the Accusation, and therefore waived his right to a hearing on the merits of
13 Accusation No. 3203.

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

15 (a) If the respondent either fails to file a notice of defense or to appear at
16 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
17 any notice to respondent.

18 9. Pursuant to its authority under Government Code section 11520, the Board
19 finds Respondent is in default. The Board will take action without further hearing and, based on
20 the evidence on file herein, finds that the allegations in Accusation No. 3203 are true.

21 10. The total cost for investigation and enforcement in connection with the
22 Accusation are \$1,370.75 as of January 30, 2009.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Adrian Iriarte has
25 subjected his Pharmacy Technician Registration No. TCH 62634 to discipline.

26 2. A copy of the Accusation is attached.

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

28 4. The Board is authorized to revoke Respondent's Pharmacy Technician

1 Registration based upon the following violations alleged in the Accusation:

2 Conviction of a substantially related crime: On or about October 31,2006,
3 Respondent was convicted by San Luis Obispo Superior Court on a plea of nolo
4 contendere for violating Health and Safety Code section 11375(a) (possession of
5 concentrated cannabis), a misdemeanor.

6 ORDER


7 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 62634,
8 heretofore issued to Respondent Adrian Iriarte, is revoked.

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

14 This Decision shall become effective on May 8, 2009.

15 It is so ORDERED April 8, 2009

16 BOARD OF PHARMACY
17 DEPARTMENT OF CONSUMER AFFAIRS
18 STATE OF CALIFORNIA

19 By 
20 KENNETH H. SCHELL
21 Board President

21 50392657.wpd
22 DOJ docket number:LA2008601444

23 Attachment:

24 Exhibit A: Accusation No. 3203

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Exhibit A

Accusation No. 3203

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 3203

12 ADRIAN IRIARTE
1524 21st Street
13 Oceano, CA 93445

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 62634

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 2. On or about August 22, 2005, the Board of Pharmacy (Board) issued
22 Pharmacy Technician Registration No. TCH 62634 to Adrian Iriarte (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on July 31, 2009, unless renewed.

25 **JURISDICTION**

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

1 made suspending the imposition of sentence, irrespective of a subsequent order under Section
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
3 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
4 or indictment. . . .”

5 **REGULATORY PROVISIONS**

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

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

13 **DANGEROUS DRUGS/CONTROLLED SUBSTANCES**

14 4. "Marijuana" is a Schedule I controlled substance as defined in Health and
15 Safety Code section 11054, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
16 Business and Professions Code section 4022.

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

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Conviction of a Substantially Related Crime)**

23 6. Respondent is subject to disciplinary action under section 4301,
24 subdivision (l), of the Code, in conjunction with California Code of Regulation, title 16, section
25 1770, in that Respondent was convicted of a crime substantially related to the qualifications,
26 functions or duties of a licensed pharmacy technician, as follows:

27 a. On or about October 31, 2006, Respondent was convicted by the Court on
28 a plea of nolo contendere for violating Health and Safety Code section 11375(a) (possession of

1 concentrated cannabis), a misdemeanor, in the criminal proceeding entitled *The People of The*
2 *State of California v. Adrian Iriarte* (Super. Ct. San Luis Obispo County, 2006, No. F388104).
3 Respondent was placed on 3 years of probation and ordered to 60 hours of volunteer community
4 work service. The circumstances surrounding the conviction are that on or about May 10, 2006,
5 the San Luis Obispo Police stopped Respondent for driving his vehicle erratically. During a
6 vehicle search, a one half pound of marijuana was discovered behind the seat of Respondent's
7 vehicle. Respondent was placed under arrest. Respondent submitted a letter to the Board stating
8 he would surrender his pharmacy technician license.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Dishonest Acts)**

11 7. Respondent is subject to disciplinary action under section 4301,
12 subdivision (f), on the grounds of unprofessional conduct in that on or about May 10, 2006,
13 Respondent committed an act involving dishonesty. Complainant refers to, and by this reference
14 incorporates, the allegation set forth above in paragraph 6, subparagraph (a), inclusive, as though
15 set forth fully.

16 **PRAYER**

17 WHEREFORE, Complainant requests that a hearing be held on the matters herein
18 alleged, and that following the hearing, the Board issue a decision:

19 A. Revoking or suspending Pharmacy Technician Registration Number
20 TCH 62634, issued to Respondent;

21 B. Ordering Respondent to pay the Board the reasonable costs of the
22 investigation and enforcement of this case, pursuant to Business and Professions Code section
23 125.3; and,

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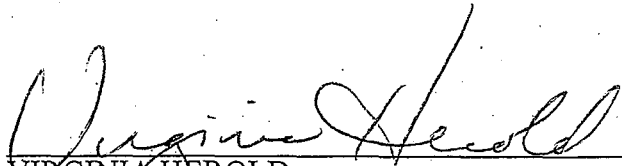
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C. Taking such other and further action as deemed necessary and proper.

DATED: 11/12/08



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