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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. 3315

13 **JERRY MADRUGA, JR.**
also known as **JERRY MADRUGA**
14 10231 Elder Avenue
Hanford, CA 93230

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 Pharmacy Technician License No. TCH 19498

16 Respondent.
17

18 FINDINGS OF FACT

19 1. On or about May 14, 2009, Complainant Virginia Herold, in her official capacity as
20 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 3315 against Jerry Madruga, Jr. (Respondent) before the Board of Pharmacy.

22 2. On or about June 24, 1996, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 19498 to Respondent. The license will expire on April 30, 2010,
24 unless renewed.

25 3. On or about May 27, 2009, Christina Pek, an employee of the Department of Justice,
26 served by Certified and First Class Mail a copy of the Accusation No. 3315, Statement to
27 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,
28 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is:

1 10231 Elder Avenue, Hanford, CA 93230. A copy of the Accusation is attached as exhibit A, and
2 is incorporated herein by reference.

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

5 5. The certified mail domestic return receipt was returned to the Attorney General's
6 Office and was signed on May 29, 2009, by Shirley Madruga.

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

12 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
13 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3315.

14 7. 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 the hearing, the
16 agency may take action based upon the respondent's express admissions or upon other evidence
17 and affidavits may be used as evidence without any notice to respondent.

18 8. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 evidence on file herein, finds that the allegations in Accusation No. 3315 are true.

21 3. There are no costs for investigation and enforcement in connection with the
22 Accusation.

23 DETERMINATION OF ISSUES

24 1. Based on the foregoing findings of fact, Respondent Jerry Madruga, Jr. has subjected
25 his Pharmacy Technician License No. TCH 19498 to discipline.

26 2. A copy of the Accusation is attached.

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

28

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A C C U S A T I O N

14 Pharmacy Technician License No. TCH 19498

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about June 24, 1996, the Board of Pharmacy issued Pharmacy
21 Technician License Number TCH 19498 to Jerry Madruga, Jr. (Respondent). The pharmacy
22 technician license was in full force and effect at all times relevant to the charges brought herein
23 and will expire on April 30, 2010, unless renewed.

24 ///
25 ///
26 ///

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

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

7 (b) The board shall discipline the holder of any license issued by
8 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:

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

11 (3) Suspending his or her right to practice for a period not
12 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.

13 5. Section 4301 of the Code states, in pertinent part:

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

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

19 (g) Knowingly making or signing any certificate or other document
20 that falsely represents the existence or nonexistence of a state of facts.

 ...

21 (j) The violation of any of the statutes of this state, or any other
22 state, or of the United States regulating controlled substances and dangerous
drugs.

 ...

23 (l) The conviction of a crime substantially related to the
24 qualifications, functions, and duties of a licensee under this chapter. The record
25 of conviction of a violation of Chapter 13 (commencing with Section 801) of Title
26 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
27 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
28 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

1 if the conviction is of an offense substantially related to the qualifications,
2 functions, and duties of a licensee under this chapter. A plea or verdict of guilty
3 or a conviction following a plea of nolo contendere is deemed to be a conviction
4 within the meaning of this provision. The board may take action when the time
5 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
6 or when an order granting probation is made suspending the imposition of
7 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
8 Code allowing the person to withdraw his or her plea of guilty and to enter a plea
9 of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
10 information, or indictment.

6. Section 4060 of the Code states, in pertinent part:

7
8 No person shall possess any controlled substance, except that
9 furnished to a person upon the prescription of a physician, dentist, podiatrist,
10 optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or
11 furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to
12 Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
13 assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section
14 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or
15 clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section
16 4052.

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

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

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Criminal Convictions)

22 9. Respondent's pharmacy technician license is subject to discipline under
23 Code section 430, subdivision (l), in that Respondent has been convicted of crimes that are
24 substantially related to the qualifications, functions, and duties of a licensed pharmacy
25 technician, as follows:

26 a. On December 9, 2005, in the criminal proceeding titled *People of the State*
27 *of California v. Jerry Madruga* (Super. Ct. Kings County, 2005, Case No. 05CM9067),
28 Respondent was convicted by the court on his plea of nolo contendere to two misdemeanor

1 violations of Penal Code section 470(D)(forgery). Respondent was initially charged with
2 fourteen felony counts of violating Penal Code section 470(D), but two of the charges were
3 reduced to misdemeanors, and the other twelve counts were dismissed in view of his plea, as set
4 forth above. The circumstances of the crime are that on or about October 15, 2004, and October
5 25, 2004, Respondent willfully and unlawfully, with the intent to defraud, falsely made, altered,
6 forged, counterfeited, uttered, published, passed and attempted to pass, as true and genuine, a
7 Doctor's Medical Verification Form, knowing the same to be false, altered, forged and
8 counterfeited.

9 b. On September 20, 2004, in the criminal proceeding titled *People of the*
10 *State of California v. Jerry Madruga* (Super. Ct. Kings County, 2004, Case No. 04CM2910),
11 Respondent was convicted by the court on his plea of nolo contendere to a misdemeanor
12 violation of Vehicle Code section 12500(a)(driving without a valid driver's license), a Vehicle
13 Code section 5200 infraction (display of vehicle license plates), and a Vehicle Code section
14 23222(a) infraction (possession of open container of alcoholic beverage while driving). In
15 addition, the court found Respondent guilty of one misdemeanor violation of Vehicle Code
16 section 40508(B)(failure to pay a fine), and a Penal Code section 1214.1 infraction (failure to pay
17 fine).

18 c. On August 15, 2002, in the criminal proceeding titled *People of the State*
19 *of California v. Jerry Madruga* (Super. Ct. Kings County, 2002, Case No. 02CM1580),
20 Respondent was convicted by the court on his plea of nolo conterdere to a misdemeanor violation
21 of Penal Code section 12025(A)(1)(carrying a concealed weapon in a vehicle).

22 d. On June 22, 1998, in the criminal proceeding titled *People of the State of*
23 *California v. Jerry Madruga* (Super. Ct. Kings County, 1998, Case No. H981253), Respondent
24 was convicted by the court on his guilty plea to a misdemeanor violation of Vehicle Code section
25 14601.2(A)(driving when driver's license is suspended or revoked for driving under the
26 influence), and a violation of Vehicle Code section 22350 (speeding), and infraction.

27 e. On December 16, 1997, in the criminal proceeding titled *People of the*
28 *State of California v. Jerry Madruga*, (Super. Ct., 1997, Case No. H973322), Respondent was

1 convicted by the Court on his plea of *nolo contendere* of violating: Vehicle Code section 23152(b)
2 (driving with blood alcohol level of .08% or more); and Vehicle Code section 12500(a) (driving
3 without a valid driver's license), both misdemeanors.

4 **SECOND CAUSE FOR DISCIPLINE**

5 (Making or Signing a False Document)

6 10. Respondent's pharmacy technician license is subject to discipline under
7 Code section 4301, subdivision (g), in that Respondent made or signed a document that falsely
8 represented the existence or nonexistence of a state of facts. On December 9, 2005, Respondent
9 was convicted of two counts of Penal Code section 470(D) (forgery), as stated in paragraph 9,
10 subdivision (a). The circumstances are that Respondent submitted fraudulent documents to his
11 employer, the Department of Corrections, that appeared to be from a doctor and attempted to
12 excuse Respondent's absence from work.

13 **THIRD CAUSE FOR DISCIPLINE**

14 (Possession of a Controlled Substance)

15 11. Respondent's pharmacy technician license is subject to discipline under
16 Code section 4060, in that Respondent was arrested for possession and transportation of
17 methamphetamine. On July 6, 2007, Kings County Sheriff Lieutenant Parker Sever pulled
18 Respondent over for a traffic violation and Respondent subsequently consented to a search of his
19 vehicle. A search of the vehicle revealed methamphetamine located in the center console and
20 Respondent was arrested on two felony violations of the Health and Safety Code, section 11377
21 (possession of a controlled substance) and section 11379 (transportation of a controlled
22 substance).

23 **FOURTH CAUSE FOR DISCIPLINE**

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

25 12. Respondent's pharmacy technician license is subject to discipline under
26 Code section 4301, subdivision (f), in that Respondent has committed acts involving moral
27 turpitude, dishonesty, fraud, deceit, or corruption, as set forth in paragraph 9.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Violation of State/Federal Statute)

3 13. Respondent's pharmacy technician license is subject to discipline under
4 Code section 4301, subdivision (j), in that he violated that she violated Bus. & Prof. Code section
5 4060 and Health & Safety Code sections 11377 and 11379, as set forth in paragraph 11.

6 **PRAYER**

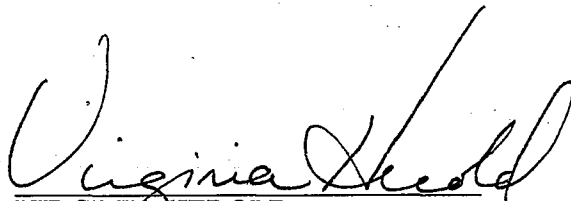
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

9 A. Revoking or suspending Pharmacy Technician License Number TCH
10 19498, issued to Jerry Madruga, Jr. also known as Jerry Madruga.

11 B. Ordering Jerry Madruga, Jr. also known as Jerry Madruga to pay the Board
12 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to
13 Business and Professions Code section 125.3;

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

15
16 DATED: 5/14/09



17
18
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

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