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

10 In the Matter of the Accusation Against:

Case No. 3396

11 **JOHN M. CALDERON**
12 2418 North Pacific
13 Santa Ana, CA 92706

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

14 **Pharmacy Technician License No. TCH**
15 **63110**

16 Respondent.

17
18 **FINDINGS OF FACT**

19 1. On or about September 2, 2009, Complainant Virginia Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 3396 against John M. Calderon (Respondent) before the Board of Pharmacy.

22 2. On or about June 13, 2005, the Board of Pharmacy (Board) issued Pharmacy
23 Technician No. TCH 63110 to Respondent. The Pharmacy Technician was in full force and
24 effect at all times relevant to the charges brought herein and will expire on February 28, 2011,
25 unless renewed.

26 3. On or about September 9, 2009, Rosita Donovan, an employee of the Department of
27 Justice, served by Certified and First Class Mail a copy of the Accusation No. 3396, Statement to
28 Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,

1 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 2418
2 North Pacific, Santa Ana, CA 92706.

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

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

6 5. On or about September 11, 2009, the Accusation Packet served via certified was
7 delivered to 2418 North Pacific, Santa Ana, CA 92706, Respondent's address of record, and a
8 signed return receipt of certified mail was returned of the Office of the Attorney General. The
9 Accusation Packet served via First Class Mail has not been returned to this Office.

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

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

16 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 3396.

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

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

24 9. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 evidence on file herein, finds that the allegations in Accusation No. 3396 are true.

27 10. The total costs for investigation and enforcement in connection with the Accusation
28 are \$2,164.00 as of December 4, 2009.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent John M. Calderon has subjected
3 his Pharmacy Technician license No. TCH 63110 to discipline.

4 2. A copy of the Accusation is attached.

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

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

8 a. Unprofessional conduct-possession of controlled substance paraphernalia in violation
9 of Business and Professions Code section 4301, subdivision (j).

10 b. Unprofessional conduct-act involving moral turpitude and/or dishonesty in violation
11 of Business and Professions Code section 4301, subdivision (f).

12 c. Unprofessional conduct in violation of Business and Professions Code section 4301.

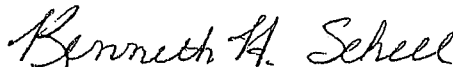
13 ORDER

14 IT IS SO ORDERED that Pharmacy Technician license No. TCH 63110, heretofore issued
15 to Respondent John M. Calderon, is revoked.

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

20 This Decision shall become effective on April 8, 2010.

21 It is so ORDERED March 9, 2010.

22 

23 KENNETH H. SCHELL, BOARD PRESIDENT
24 FOR THE BOARD OF PHARMACY
25 DEPARTMENT OF CONSUMER AFFAIRS

26 80412976.DOC
27 DOJ docket number:SD2009804358

28 Attachment: Exhibit A: Accusation No. 3396

Exhibit A
Accusation No. 3396

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3396

12 **JOHN M. CALDERON**
13 2418 North Pacific
14 Santa Ana, CA 92706

A C C U S A T I O N

15 **Pharmacy Technician No. TCH 63110**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about June 13, 2005, the Board of Pharmacy issued Pharmacy Technician
23 license number TCH 63110 to John M. Calderon (Respondent). The Pharmacy Technician
24 license was in full force and effect at all times relevant to the charges brought herein and will
25 expire on February 28, 2011, unless renewed.

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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 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.

"..."

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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

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1 STATUTORY PROVISIONS AND REGULATIONS

2 6. Section 4301 of the Code states:

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

6 "...

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

10 "...

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

13 "..."

14 7. Section 492 of the Code states:

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

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

26 8. California Code of Regulations, title 16, section 1770, states:

27 "For the purpose of denial, suspension, or revocation of a personal or facility license
28 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare."

5 9. Section 482 of the Code states:

6 "Each board under the provisions of this code shall develop criteria to evaluate the
7 rehabilitation of a person when:

8 "(a) Considering the denial of a license by the board under Section 480; or

9 "(b) Considering suspension or revocation of a license under Section 490.

10 "Each board shall take into account all competent evidence of rehabilitation furnished by
11 the applicant or licensee."

12 10. Title 16, Code of Regulations, section 1769 provides in part:

13 "(b) When considering the suspension or revocation of a facility or a personal license on
14 the ground that the licensee or the registrant has been convicted of a crime, the board, in
15 evaluating the rehabilitation of such person and his present eligibility for a license will consider
16 the following criteria:

17 "(1) Nature and severity of the act(s) or offense(s).

18 "(2) Total criminal record.

19 "(3) The time that has elapsed since commission of the act(s) or offense(s).

20 "(4) Whether the licensee has complied with all terms or parole, probation,
21 restitution or any other sanctions lawfully imposed against the licensee.

22 "(5) Evidence, if any, or rehabilitation submitted by the licensee."

23 COST RECOVERY

24 11. Section 125.3 of the Code provides, in pertinent part, that the
25 Board/Registrar/Director may request the administrative law judge to direct a licensee found to
26 have committed a violation or violations of the licensing act to pay a sum not to exceed the
27 reasonable costs of the investigation and enforcement of the case.

1 DRUGS

2 12. Methamphetamine is a Schedule II controlled substance as designated by Health and
3 Safety Code section 11055(d)(2) and is a dangerous drug pursuant to Business and Professions
4 Code section 4022.

5 FACTS

6 13. On September 30, 2006 at about 2:40 a.m., a Santa Ana Police Officer was in a
7 marked police car when the officer saw a black Honda Accord driving without headlights. The
8 officer followed the Honda and observed that it continued traveling without headlights and had
9 tinted front windows. The officer conducted a traffic stop and spoke with Respondent, the driver
10 of the Honda. The officer told Respondent to keep his hands on the steering wheel. Respondent
11 repeatedly moved around inside the vehicle, turning around to look at the officer. Fearing
12 Respondent may have a weapon in the vehicle, the officer requested that Respondent exit the
13 vehicle. When asked, Respondent denied having anything illegal in his possession. When asked
14 for his driver's license, Respondent advised the officer that he had left his license in the vehicle
15 and consented to the officer retrieving his license from the vehicle. Not finding a wallet or
16 Respondent's license anywhere in plain view, the officer opened the center console where a glass
17 pipe was found. Glass pipes such as the one found in Respondent's vehicle are commonly used
18 to ingest methamphetamine. When the officer confronted Respondent, Respondent started to cry.
19 The officer counseled Respondent to stop smoking methamphetamine and provided him with
20 counseling resources. Respondent was arrested and charged with violating Health and Safety
21 Code section 11364, possession of paraphernalia used for unlawfully injecting or smoking a
22 controlled substance. Respondent entered a plea of guilty. Under Penal Code Section 1000, et
23 seq., judgment was deferred for 18 months and on May 28, 2008, the charges were dismissed
24 upon Respondent's completion of a deferred entry of judgment treatment program.

25 FIRST CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct-Possession of Controlled Substance Paraphernalia)

27 14. Respondent is subject to disciplinary action under Code section 4301, subdivision (j),
28 for unprofessional conduct by violating of the laws of the State of California in that on September

1 30, 2006, Respondent violated Health and Safety Code section 11364 by unlawfully possessing a
2 methamphetamine pipe as is more fully set forth in paragraph 13, above.

3 SECOND CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct- Act Involving Moral Turpitude and/or Dishonesty)

5 15. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),
6 for unprofessional conduct in that he acted with moral turpitude and dishonesty in that on
7 September 30, 2006, Respondent was dishonest when he denied having anything illegal in his
8 possession to the police officer when he unlawfully possessed a methamphetamine pipe, as more
9 fully set forth in paragraph 13, above.

10 THIRD CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct)

12 16. Respondent is subject to disciplinary action under Code section 4301 for
13 unprofessional conduct in that on September 30, 2006, Respondent was in possession of a
14 methamphetamine pipe, as more fully set forth in paragraph 13, above.

15 PRAYER

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

18 1. Revoking or suspending Pharmacy Technician Number TCH 63110, issued to John
19 M. Calderon.

20 2. Ordering John M. Calderon to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3;

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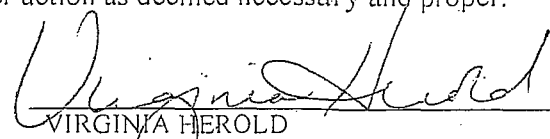
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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/2/09



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

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