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

10 In the Matter of the Accusation Against:

Case No. 3436

11
12 **CHARRIZA C. MALUTO**
13 **140 Jimenez Way**
14 **Hayward, California 94544**
15 **Pharmacy Technician License No. TCH**
47630

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16
17 Respondent.

18 FINDINGS OF FACT

19 1. On or about February 8, 2010, 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. 3436 against Charriza C. Maluto (Respondent) before the Board of Pharmacy.
22 (Accusation attached as Exhibit A.)

23 2. On or about March 19, 2003, the Board of Pharmacy (Board) issued Pharmacy
24 Technician License No. TCH 47630 to Respondent. The Pharmacy Technician License was in
25 full force and effect at all times relevant to the charges brought in this Default and will expire on
26 February 28, 2011, unless renewed.

27 3. On or about February 25, 2010, Respondent was served by Certified and First Class
28 Mail copies of the Accusation No. 3436, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 136 and/or agency specific statute or regulation, is required to be reported and maintained
4 with the Board. Respondent's address of record was and is:

5 Charriza C. Maluto
6 140 Jimenez Way
7 Hayward, California 94544

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
10 124.

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

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3436.

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

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
26 as well as taking official notice of all the investigatory reports, exhibits and statements contained
27 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3436,
28 finds that the charges and allegations in Accusation No. 3436, are separately and severally true
and correct by clear and convincing evidence.

1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement are \$2967.50, as of November 12, 2010.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Charriza C. Maluto has subjected
6 her Pharmacy Technician License No. TCH 47630 to discipline.

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

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
9 License based upon the following violations alleged in the Accusation which are supported by the
10 evidence contained in the Default Decision Investigatory Evidence Packet in this case:

11 a. Business and Professions Code sections 490 and 4301(l) (Conviction of
12 Substantially Related Crime(s)), and

13 b. Business and Professions Code section 4301(f) (Acts Involving Moral
14 Torpitude, Dishonesty, Fraud, Deceit or Corruption).

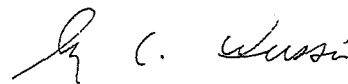
15 ORDER

16 IT IS SO ORDERED that Pharmacy Technician License No. TCH 47630, issued to
17 Respondent Charriza C. Maluto, is revoked.

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

22 This Decision shall become effective on March 28, 2011.

23 It is so ORDERED February 25, 2011.

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STANLEY C. WEISSER, BOARD PRESIDENT
27 FOR THE BOARD OF PHARMACY
28 DEPARTMENT OF CONSUMER AFFAIRS

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Exhibit A

Accusation

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11 In the Matter of the Accusation Against:

Case No. 3436

12 **CHARRIZA C. MALUTO**
140 Jimenez Way
13 Hayward, California 94544

ACCUSATION

14 **Pharmacy Technician License No. TCH
47630**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

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

21 2. On or about March 19, 2003, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 47630 to Charriza C. Maluto (Respondent). The Pharmacy Technician
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on February 28, 2011, unless renewed.

25 JURISDICTION

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

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

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

10. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

11. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to Title 16, California Code of Regulations, section 1770, for the conviction of the following crimes substantially related to the qualifications, functions, and duties of a pharmacy technician.

a. On or about April 15, 1998, in *People v. Charriza Maluto*, Case No. 214868A in Alameda County Superior Court, Respondent pleaded nolo contendere and was convicted of violating Penal Code section 484(a) (Petty Theft), a misdemeanor. Imposition of sentence was suspended in favor of a conditional probation of three (3) years, terms and conditions including 1 day in jail, fines, fees, and a stay away order (from Walmart stores in California). The crime occurred on or about February 26, 1998, at approximately 3:15 p.m. wherein Respondent stole items valued at less than \$400 from the Union City Walmart store. She was issued Citation No. 63090, charging her with violating Penal Code section 488 (Petty Theft).

b. On or about October 5, 2006, in *USA v. Charriza C. Maluto*, Case No. 4:05-cr-00749-CW-1 in U.S. District Court for the Northern District, Respondent was convicted of violating Penal Code section 487(a) (Grand Theft), a felony. The circumstances are as follows:

1 1. Between on or about March 2005 and September 2005, Respondent was
2 employed as a deposit processor at the Wells Fargo Bank Processing Center in Fremont,
3 California. In that position, she had access to checks and money orders intended for deposit into
4 customers' bank accounts. Between on or about July 19, 2005 and September 7, 2005, eighteen
5 customers reported to Wells Fargo that their deposits of traveler checks and money orders did not
6 post to their accounts. The Wells Fargo Bank Fraud Investigator assigned to the matter
7 discovered that between the eighteen customers, \$103,400.00 did not post to their accounts.

8 2. In or about September 2005, the Fraud Investigator submitted a complaint
9 to the Fremont Police Department in which Respondent was identified as the suspect for theft by
10 embezzlement.

11 3. On or about September 19, 2005, Respondent was contacted by the
12 Fremont Police, and admitted during police interview(s) to stealing approximately \$140,000 in
13 traveler checks and money orders from the Wells Fargo Processing Center and using them to buy
14 things for herself and others. She kept a record of every check and money order she stole in a
15 spiral binder. Entries in the spiral binder added up to \$258,409.42.

16 4. On or about September 22, 2005, Respondent was charged by criminal
17 complaint in Alameda County Superior Court, Court Number 214686-A, with (1) Penal Code
18 section 487(a) (Grand Theft by Embezzlement) and (2) Penal Code section 475(c) (Forgery), both
19 felonies.

20 5. On or about February 23, 2006, the Superior Court matter was dismissed
21 and sent to federal court to be prosecuted by the Federal Government.

22 6. On or about April 24, 2006, Respondent pleaded guilty in federal court to
23 Count One (Bank Embezzlement and Criminal Forfeiture), a felony. Imposition of sentence was
24 held on September 25, 2006. Respondent was sentenced to 11 months in prison, three years of
25 supervised release, \$100 fine and \$54,874 restitution.

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