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

8 In the Matter of the Accusation Against:

Case No. 3469

9 **FRANK MENDOZA a.k.a**
10 **FRANK MALDONADO MENDOZA**
11 **4720 East Kaviland Avenue**
12 **Fresno, CA 93725**

DEFAULT DECISION AND ORDER

12 **Pharmacy Technician Registration No. TCH**
13 **71410**

[Gov. Code, §11520]

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15 Respondent.

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17 FINDINGS OF FACT

18 1. On or about January 26, 2010, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 3469 against Frank Mendoza a.k.a Frank Maldonado Mendoza (Respondent)
21 before the Board of Pharmacy.

22 2. On or about August 22, 2006, the Board of Pharmacy (Board) issued Pharmacy
23 Technician License No. TCH 71410 to Respondent. The License was in full force and effect at
24 all times relevant to the charges brought herein, and will expire on October 31, 2011, if not
25 renewed.

26 3. On or about February 2, 2010, L. Talani, an employee of the Department of Justice,
27 served by Certified and First Class Mail a copy of the Accusation No. 3469, a Statement to
28 Respondent, two copies of a form Notice of Defense, a Request for Discovery, and copies of

1 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with
2 the Board which was and is: 4720 East Kavaland Avenue, Fresno, CA 93725. A copy of the
3 Accusation is attached as Exhibit A, and incorporated herein by this 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. Government Code section 11506 states, in pertinent part:

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

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
12 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
13 3469.

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. 3469 are true.

21 9. The total costs for investigation and enforcement in connection with the Accusation
22 are \$935.00 as of March 24, 2010.

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24 DETERMINATION OF ISSUES

25 1. Based on the foregoing findings of fact, Respondent Frank Mendoza a.k.a Frank
26 Maldonado Mendoza has subjected his Pharmacy Technician License No. TCH 71410 to
27 discipline.

28 2. A copy of the Accusation is attached.

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

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

4 a. In violation of Business and Professions Code sections 4300 and 4301(l), in or around
5 November 17, 2008, Respondent was convicted of a crime involving a controlled substance;

6 b. In violation of Business and Professions Code sections 4060, 4300 and 4301(j) and
7 Health and Safety Codes 11359, Respondent violated statutes regulating the controlled substance
8 Marijuana;

9 c. In violation of Business and Professions Code sections 4300 and 4301(p) in
10 conjunction with Code section 480, by way of the actions described in paragraph(s) 4(a) and 4(b)
11 above, Respondent engaged in unprofessional conduct.

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ORDER

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IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 71410, heretofore
issued to Respondent Frank Mendoza a.k.a Frank Maldonado Mendoza, is revoked.

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

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This Decision shall become effective on June 23, 2010.

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It is so ORDERED May 24, 2010.

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Kenneth H. Schell

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

Attachment: Exhibit A: Accusation No. 3469

Exhibit A
Accusation No. 3469

1 EDMUND G. BROWN JR.
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
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Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. AC-2009-3469

12 **FRANK MENDOZA, a.k.a.**
13 **FRANK MALDONADO MENDOZA**
4720 East Kaviland Avenue
14 Fresno, CA 93725

A C C U S A T I O N

15 Pharmacy Technician
Registration Number TCH 71410

16 Respondent.

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 August 22, 2006, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 71410 to Frank Mendoza, a.k.a. Frank Maldonado Mendoza
23 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
24 relevant to the charges brought herein and will expire on October 31, 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 (Code) unless otherwise indicated.

(iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

8. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

9. Health and Safety Code section 11359 provides:

Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison.

10. Health and Safety Code section 11590 states, in pertinent part:

(a) [A] any person who is convicted in the State of California of any offense defined in Section . . . 11359, . . . shall within 30 days of his or her coming into any county or city, or city and county in which he or she resides or is temporarily domiciled for that length of time, register with the chief of police of the city in which he or she resides or the sheriff of the county if he or she resides in an unincorporated area.

DRUG

11. **Marijuana** is a Schedule I controlled substance as designated in Health and Safety Code section 11054, subdivision (d)(13).

COST RECOVERY

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

1 FIRST CAUSE FOR DISCIPLINE

2 (CONVICTION OF CRIME INVOLVING CONTROLLED SUBSTANCE)

3 13. Respondent is subject to disciplinary action under Code sections 4300 and 4301,
4 subdivision (1), on the grounds of unprofessional conduct in that on or about November 17, 2008,
5 Respondent was convicted in the case of *People v. Frank Mendoza*, Shasta County Superior
6 Court Case No. 08-08050, on his plea of guilty of violating Health and Safety Code section 11359
7 [possession of marijuana for sale], a felony. Said conviction is substantially related to the
8 qualifications, duties, and functions of a Registered Pharmacy Technician. Respondent was
9 sentenced to State Prison for the aggravated term of three years, execution of sentence was
10 suspended and imposition of sentence was suspended for five years. Respondent was admitted to
11 formal probation under specified terms and conditions including, but not limited to: serving time
12 in Shasta County jail for 365 days, with credit for time served and custody conduct credits for a
13 total of 240 days; payment of restitution, fines, and fees counseling; provide specified samples
14 and specimens, register as a controlled substance offender under Health & Safety Code section
15 11590; and, submit to random chemical testing and warrantless search, with or without probable
16 cause of his person, property, and vehicle.

17 14. The underlying circumstances are: Respondent knowingly attempted to transport
18 155.1 pounds of packaged Marijuana to Spokane, Washington, in exchange for the payment of
19 \$3,000.00. The Marijuana was in the bed of Respondent's truck. Respondent was stopped by
20 law enforcement officers in Redding, California, for a traffic violation; those officers discovered
21 the Marijuana in Respondent's truck. The packaged Marijuana was concealed under three
22 locking bed covers and blanket(s) and in large plastic bags. Respondent attempted to mask the
23 odor of Marijuana by using detergent in the interior of his truck. Detergent is commonly used to
24 mask the odor of controlled substances from law enforcement K-9 dogs; however, a K-9 dog
25 detected the odor of Marijuana in the truck bed and alerted the officers. Respondent possessed
26 the controlled substance Marijuana without a prescription.

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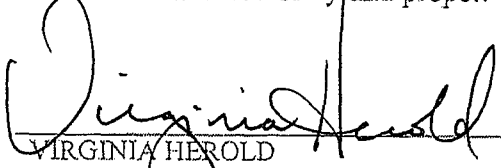
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2. Ordering Frank Mendoza, a.k.a. Frank Maldonado Mendoza, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/26/10



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

SA2009102668