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

In the Matter of the Accusation Against:

Case No. 3490

DEFAULT DECISION AND ORDER

ALBERT ANGEL AVALOS
18726 Villa Park Street
La Puente, CA 91744
**Pharmacy Technician License No. TCH
69538**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about April 1, 2010, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, filed Accusation No. 3490 against Albert Angel Avalos (Respondent) before the Board of Pharmacy.

2. On or about January 26, 2007, the Board of Pharmacy issued Pharmacy Technician License No. TCH 69538 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and expired on June 30, 2010, and has not been renewed.

3. On or about April 12, 2010, an employee of the Department of Justice served by Certified and First Class Mail a copy of the Accusation No. 3490, Statement to Respondent, Accusation, Notice of Defense, Request for Discovery and Discovery Statutes to Respondent's

1 address of record with the Board, which was and is: 18726 Villa Park Street, La Puente, CA
2 91744.

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. On or about April 16, 2010, a signed certified mail return receipt from the Accusation
6 package sent to Respondent was received by the Attorney General's Office.

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

13 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
15 3490.

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

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

21 9. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based upon the
23 evidence contained in the Default Decision Evidence Packet, finds that the charges and
24 allegations in Accusation No. 3490, are separately and severally, true and correct.

25 10. The total cost for investigation and enforcement in connection with the Accusation
26 are \$2276.50 as of May 28, 2010.

27 DETERMINATION OF ISSUES

28 1. Based on the foregoing findings of fact, Respondent Albert Angel Avalos has
subjected his Pharmacy Technician License No. TCH 69538 to discipline.

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

Exhibit A
Accusation No. 3490

1 EDMUND G. BROWN JR.
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 NANCY A. KAISER
Deputy Attorney General
4 State Bar No. 192083
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5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804
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. 3490

12 **ALBERT ANGEL AVALOS**
13 18726 Villa Park Street
La Puente, CA 91744

ACCUSATION

14 **Pharmacy Technician License No. TCH 69538**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about January 26, 2007, the Board of Pharmacy issued Pharmacy Technician
22 License Number TCH 69538 to Albert Angel Avalos (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 June 30, 2010, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4300 of the Code permits the Board to take disciplinary action to suspend or
2 revoke a license issued by the Board.

3 5. Section 4301 of the Code states:

4 "The board shall take action against any holder of a license who is guilty of unprofessional
5 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

6 Unprofessional conduct shall include, but is not limited to, any of the following:

7 ...

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

10 "(k) The conviction of more than one misdemeanor or any felony involving the use,
11 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
12 combination of those substances.

13 "(l) The conviction of a crime substantially related to the qualifications, functions, and
14 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
15 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
16 substances or of a violation of the statutes of this state regulating controlled substances or
17 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
18 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
19 The board may inquire into the circumstances surrounding the commission of the crime, in order
20 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
21 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
22 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
24 of this provision. The board may take action when the time for appeal has elapsed, or the
25 judgment of conviction has been affirmed on appeal or when an order granting probation is made
26 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
27 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
28

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
2 indictment.”

3 6. Section 492 of the Code states, in part:

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

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

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

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

23 **STATE DRUG STATUTES**

24 9. Health and Safety Code section 11007 states that “controlled substance” unless
25 otherwise specified, means a drug, substance, or immediate precursor which is listed in any
26 schedule in Section 11054, 11055, 11056, 11057, or 11058.

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