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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. 3564

XIU MING ZHU
555 Eddy Street, # 4
San Francisco, CA 94109

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician License No. TCH 82173

Respondent.

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FINDINGS OF FACT

1. On or about August 23, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3564 against Xiu Ming Zhu (Respondent) before the Board of Pharmacy. (A true and correct copy of the Accusation is attached hereto as exhibit A.)

2. On or about March 20, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 82173 to Respondent. The License was in full force and effect at all times relevant to the charges herein and will expire on February 29, 2012, unless renewed.

3. On or about August 31, 2010, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 3564; a Statement to Respondent, a Notice of Defense (2 copies); a Request for Discovery; and the Discovery Statutes (Gov. Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: 555 Eddy Street, #4, San Francisco, CA 94109. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board.

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

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

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

9 6. Respondent failed to file a Notice of Defense within 15 days after service on him of
10 the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 3564.

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

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

16 8. Pursuant to its authority under Government Code section 11520, the Board finds
17 Respondent is in default. The Board will take action without further hearing and, based on the
18 relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter,
19 as well as taking official notice of all the investigatory reports, exhibits and statements contained
20 therein on file at the Board's offices regarding the allegations contained in Accusation No. 3564,
21 finds that the charges and allegations in Accusation No. 3564, are separately and severally true
22 and correct by clear and convincing evidence.

23 9. Taking official notice of its own internal records, pursuant to Business and
24 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
25 and Enforcement are \$1,897.50 as of October 11, 2010.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Xiu Ming Zhu has subjected his
28 Pharmacy Technician Registration No. TCH 82173 to discipline.

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

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

4 a. In violation of Business and Professions Code section(s) 4301(l) and/or 490, by
5 reference to California Code of Regulations, title 16, section 1770, Respondent was convicted of
6 a substantially related crime, when on or about July 7, 2009, in a criminal case titled *People v.*
7 *Michael Duong, Linh Thu Vuong, De Vuong, and Xiuming Zhu*, Case No. 415381D in Alameda
8 County Superior Court, Respondent was convicted of violating Penal Code section 550(b)(2)
9 (Insurance fraud by false written and/or oral statement), a felony, by way of a scheme with co-
10 conspirators to defraud automobile insurance companies by filing fraudulent damages claims.

11 b. In violation of Business and Professions Code section 4301(f), Respondent, as
12 described above, did acts involving moral turpitude, dishonesty, fraud, deceit, or corruption;

13 c. In violation of Business and Professions Code section 4301(g), Respondent, as
14 described above, knowingly made or signed a certificate or other document falsely representing
15 the existence or nonexistence of a set of facts,;

16 d. In violation of Business and Professions Code section 4301, Respondent, as described
17 above, engaged in unprofessional conduct.

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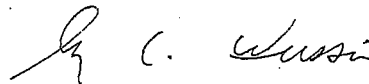
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 82173, heretofore issued to Respondent Xiu Ming Zhu, is revoked.

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.

This Decision shall become effective on February 17, 2011.

It is so ORDERED January 18, 2011.



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

default decision_LIC.rtf
DOJ Matter ID:SF2010200482

Attachment:
Exhibit A: Accusation

Exhibit A
Accusation

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Attorneys for Complainant

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. 3564

11 **XIU MING ZHU**
12 **555 Eddy Street, # 4**
13 **San Francisco, CA 94109**

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH 82173**
15 Respondent.

16 Complainant alleges:

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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 20, 2008, the Board of Pharmacy issued Pharmacy Technician
22 License No. TCH 82173 to Xiu Ming Zhu (Respondent). The License was in full force and effect
23 at all times relevant to the charges herein and will expire on February 29, 2012, unless renewed.

24 JURISDICTION

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

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1 4. Section 4011 of the Code provides that the Board shall administer and enforce both
2 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
3 Act [Health & Safety Code, §. 11000 et seq.].

4 5. Section 4300(a) of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration,
7 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
8 disciplinary action during the period within which the license may be renewed, restored, reissued
9 or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not
10 renewed within three years following its expiration may not be renewed, restored, or reinstated
11 and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of
12 the Code provides that any other license issued by the Board may be canceled by the Board if not
13 renewed within 60 days after its expiration, and any license canceled in this fashion may not be
14 reissued but will instead require a new application to seek reissuance.

15 STATUTORY AND REGULATORY PROVISIONS

16 7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
17 against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
18 not be limited to, any of the following:

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

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

24 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
25 of a licensee under this chapter.

26 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
27 revoke a license when it finds that the licensee has been convicted of a crime substantially related
28 to the qualifications, functions or duties of the license.

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

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

8 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation of the licensing
10 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

11
12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction of Substantially Related Crime(s))

14 11. Respondent is subject to discipline under section 4301(1) and/or section 490 of the
15 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
16 substantially related crime(s), in that on or about July 7, 2009, in the criminal case *People v.*
17 *Michael Duong, Linh Thu Vuong, De Vuong, and Xiuming Zhu*, Case No. 415381D in Alameda
18 County Superior Court, Respondent was convicted of one (1) count of violating Penal Code
19 section 550(b)(2) (Insurance fraud), a felony, as follows:

20 a. On or about December 11, 2008, based on an alleged scheme by which the four
21 of them conspired to defraud automobile insurance companies of funds by fraudulently inflicting
22 damage on and/or making fraudulent claims for at least two automobiles, Respondent and his 3
23 co-defendants were charged by criminal Complaint under the following criminal laws: (1) Penal
24 Code section 550(a)(1) (Insurance fraud – aiding and abetting), a felony; (2) Penal Code section
25 550(b)(2) (Insurance fraud – false written and/or oral statement or claim), a felony; (3) Penal
26 Code section 487(a) (Grand theft of personal property – in excess of \$400.00), a felony; and (4)
27 Penal Code section 182(a) (Conspiracy to commit a crime – insurance fraud), a felony.

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1 b. On or about May 18, 2009 and/or July 7, 2009, Respondent pleaded nolo
2 contendere to the second count in the Complaint, violation of Penal Code section 550(b)(2)
3 (Insurance fraud – false written and/or oral statement or claim), a felony, and was sentenced to a
4 term of probation of five (5) years, with terms and conditions including 2 days in County Jail (2
5 days CTS), fines and fees, and payment of restitution of \$11,290.41.

6
7 SECOND CAUSE FOR DISCIPLINE

8 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

9 12. Respondent is subject to discipline under section 4301(f) of the Code, in that, as
10 described in paragraph 11 above, on one or more occasions Respondent committed acts involving
11 moral turpitude, dishonesty, fraud, deceit, or corruption.

12
13 THIRD CAUSE FOR DISCIPLINE

14 (False Certificate or Document)

15 13. Respondent is subject to discipline under section 4301(g) of the Code, in that, as
16 described in paragraph 11 above, on one or more occasions Respondent knowingly made or
17 signed a certificate or other document falsely representing the existence or nonexistence of facts.

18
19 FOURTH CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct)

21 14. Respondent is subject to discipline under section 4301 of the Code in that, as
22 described in paragraphs 11 through 13 above, Respondent engaged in unprofessional conduct.

23
24 PRAYER

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

27 1. Revoking or suspending Pharmacy Technician License Number TCH 82173, issued
28 to Xiu Ming Zhu (Respondent);

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2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 8/23/10 

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

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