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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. 3639

**MARK A. VALDEZ
14097 Traverro Drive
Moreno Valley, CA 92553**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

**Pharmacy Technician License No.
TCH 83818**

Respondent.

FINDINGS OF FACT

1. On or about June 6, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3639 against Mark A. Valdez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 2, 2008, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 83818 to Respondent. The Pharmacy Technician License expired on February 28, 2010, and has not been renewed.

3. On or about June 23, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3639, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100,

1 and California Code of Regulations, title 16, section 1704, is required to be reported and
2 maintained with the Board, which was and is 14097 Traverro Drive, Moreno Valley, CA 92553.

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

6 5. No documents were returned by the U.S. Postal Service.

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
15 No. 3639.

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 on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. 3639, finds that
26 the charges and allegations in Accusation No. 3639, are separately and severally, found to be true
27 and correct by clear and convincing evidence.

28 10. Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$2,615.00, as of September 13, 2011.

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DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Mark A. Valdez has subjected
3 his Pharmacy Technician License No. TCH 83818 to discipline.

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

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

8 a. Under sections 490 and 4301, subdivision (l) of the Code, in that Respondent was
9 convicted of crime that is substantially related to the qualifications, duties, and functions of a
10 pharmacy technician, in that on May 13, 2010, Respondent was convicted of second degree
11 robbery;

12 b. Under section 4301, subdivision (f) of the Code, in that Respondent's robbery from a
13 pharmacy and individuals constitutes moral turpitude and dishonesty;

14 c. Under section 4301, subdivision (p) of the Code, in that on or about July 4, 2009,
15 Respondent violated Penal Code section 211 (second degree robbery). Such egregious conduct
16 would have warranted the denial of a pharmacy technician registration under section 480,
17 subdivisions (a)(1) and (a)(2) of the Code.

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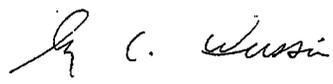
ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 83818, heretofore issued to Respondent Mark A. Valdez, 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 March 22, 2012.

It is so ORDERED February 21, 2012.



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

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DOJ Matter ID: SD2010800417

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 3639

12 **MARK A. VALDEZ**
13 **14097 Traverro Drive**
14 **Moreno Valley, CA 92553**

A C C U S A T I O N

15 **Pharmacy Technician License No. TCH**
83818

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 July 2, 2008, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 83818 to Mark A. Valdez (Respondent). The Original Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and expired on February 28, 2010, unless renewed.
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1 JURISDICTION

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

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

9 5. Section 4300, subdivision (a) of the Code states that "Every license issued may be
10 suspended or revoked."

11 STATUTORY PROVISIONS

12 6. Section 4301 of the Code states:

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

16

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

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of
22 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction
26 shall be conclusive evidence only of the fact that the conviction occurred. The
27 board may inquire into the circumstances surrounding the commission of the
28 crime, in order to fix the degree of discipline or, in the case of a conviction not
involving controlled substances or dangerous drugs, to determine if the conviction
is of an offense substantially related to the qualifications, functions, and duties of a
licensee under this chapter. A plea or verdict of guilty or a conviction following a
plea of nolo contendere is deemed to be a conviction within the meaning of this
provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting
2 probation is made suspending the imposition of sentence, irrespective of a
3 subsequent order under Section 1203.4 of the Penal Code allowing the person to
4 withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
5 the verdict of guilty, or dismissing the accusation, information, or indictment.

6

7 (p) Actions or conduct that would have warranted denial of a license.

8 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 8. Section 493 of the Code states:

13 Notwithstanding any other provision of law, in a proceeding conducted by a
14 board within the department pursuant to law to deny an application for a license or
15 to suspend or revoke a license or otherwise take disciplinary action against a
16 person who holds a license, upon the ground that the applicant or the licensee has
17 been convicted of a crime substantially related to the qualifications, functions, and
18 duties of the licensee in question, the record of conviction of the crime shall be
19 conclusive evidence of the fact that the conviction occurred, but only of that fact,
20 and the board may inquire into the circumstances surrounding the commission of
21 the crime in order to fix the degree of discipline or to determine if the conviction is
22 substantially related to the qualifications, functions, and duties of the licensee in
23 question.

24 As used in this section, "license" includes "certificate," "permit,"
25 "authority," and "registration."

26 9. Section 482 of the Code states:

27 Each board under the provisions of this code shall develop criteria to
28 evaluate the rehabilitation of a person when:

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

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

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

REGULATORY PROVISIONS

10. 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 his license or registration in a manner consistent with the public health, safety, or welfare.

11. California Code of Regulations, title 16, section 1769, states:

.....

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

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

12. Section 125.3 of the Code provides, 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.

FIRST CAUSE FOR DISCIPLINE

(May 13, 2010 Conviction for Robbery on July 4, 2009)

13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (1) of the Code in that he was convicted of crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. The circumstances giving rise to the charges were that on or about July 4, 2009,
2 Respondent, and two or more other individuals entered a pharmacy allegedly carrying one or
3 more weapons. Upon entering the pharmacy, the defendants proceeded to rob the pharmacy of
4 prescription medications as well as the personal property (wallets, cell phones and an Ipod) from
5 the pharmacy's employees who were present. One of the pharmacy's employees recognized
6 Respondent, who had worked at the pharmacy as a pharmacy technician. He and the others were
7 thereafter apprehended.

8 b. On or about May 10, 2010, Respondent entered a plea of guilty to four
9 violations of Penal Code sections 211/212.5(c), robbery in the second degree.

10 c. As a result of the conviction, on or about May 10, 2010, Respondent was
11 sentenced to two years in state prison on each of the four counts, with time to be served
12 concurrently, with 356 days credit for time served and good conduct. Respondent was further
13 ordered to pay restitution in the amount of \$250 to one victim, \$300 to another, and \$150 and
14 \$300 to two other victims. Respondent was also ordered to pay restitution to the pharmacy in the
15 amount of \$28,291.42, and required to pay other restitution and probation costs.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct – Moral Turpitude and Dishonesty)**

18 14. Respondent is subject to disciplinary action for unprofessional conduct under section
19 4301(f) of the Code in that Respondent's robbery from the pharmacy and individuals constituted
20 moral turpitude and dishonesty, as is detailed in paragraph 13, above.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Conduct That Would Have Warranted Denial of a License)**

23 15. Respondent is subject to disciplinary action under section 4301(p) of the Code in that
24 on or about July 4, 2009, Respondent violated Penal Code sections 211 and 212.5. Such
25 egregious conduct would have warranted the denial of a pharmacy technician registration under
26 section 480, subdivisions (a)(1) and (a)(2) of the Code.

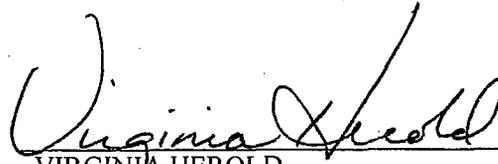
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PRAYER

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

1. Revoking or suspending Pharmacy Technician License Number TCH 83818, issued to Mark A. Valdez;
2. Ordering Mark A. Valdez 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: 6/6/11



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

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