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

11 In the Matter of the Accusation Against:

Case No. 3744

12 **DANTE SANTOS DIAZ**

**DEFAULT DECISION AND ORDER**

13 1232 E. 2nd Street, #3  
14 Long Beach, CA 90802  
15 Pharmacy Technician Registration No. TCH  
16 26083

[Gov. Code, §11520]

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about August 23, 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. 3744 against Dante Santos Diaz (Respondent) before the Board of Pharmacy.

22 2. On or about June 22, 1998, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 26083 to Respondent. The Pharmacy Technician Registration  
24 was in full force and effect at all times relevant to the charges brought herein and will expire on  
25 February 29, 2012, unless renewed.

26 3. On or about September 16, 2010, Respondent was served by Certified and First Class  
27 Mail copies of the Accusation No. 3744, Statement to Respondent, Notice of Defense, Request  
28 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
2 section 136 is required to be reported and maintained with the Board. Respondent's address on  
3 record with the Board was and is:

4 **1232 E. 2nd Street, #3**  
5 **Long Beach, CA 90802.**

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

8 5. The aforementioned documents were not returned by the U.S. Postal Service.

9 6. Government Code section 11506 states, in pertinent part:

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

15 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
16 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
17 3744.

18 8. 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 9. 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. 3744,  
28 finds that the charges and allegations in Accusation No. 3744, are separately and severally true  
and correct by clear and convincing evidence.

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 are \$1,012.50 as of October 5, 2010.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Dante Santos Diaz has subjected his Pharmacy Technician Registration No. TCH 26083 to discipline.

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

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

a. **Possession of a Controlled Substance.** Respondent is subject to disciplinary action under Code sections 4060 and 4301, subdivisions (j), on the grounds of unprofessional conduct in that Respondent was found in possession of cocaine, a violation of Health and Safety Code section 11350, subdivision (a). The conduct is more particularly described as follows:

i. On or about January 2, 2010, a security guard at the Avalon nightclub in Hollywood, observed Respondent engage in a hand to hand drug sale transaction.

ii. The security guard confronted Respondent and found 1.08 grams of cocaine in Respondent's hand.

iii. Respondent was booked into the Hollywood jail for possession of cocaine.

iv. On or about January 5, 2010, Los Angeles County District Attorney's Office filed criminal charges against Respondent for violating Health and Safety Code section 11350, possession of cocaine, a felony.

v. On or about March 9, 2010, Respondent entered a plea of guilty to violating Health and Safety Code section 11350, possession of cocaine, a felony.

vi. On that same day, the sentencing judge deferred entry of judgment pursuant to Penal Code section 1001.2 for a period of 18 months.

b. **Unprofessional Conduct.** Respondent is subject to disciplinary action under Code section 4301, in that Respondent engaged in unprofessional conduct. Respondent committed acts constituting unprofessional conduct, as more particularly set forth in paragraph 3, subdivision (a), subparagraphs (i) through (vi), inclusive, above, and herein incorporated by reference.

## ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 26083, heretofore issued to Respondent Dante Santos Diaz, 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 January 19, 2011.

It is so ORDERED December 20, 2010.

H. C. Wessing

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

DOJ Matter ID:LA2010503364  
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1 EDMUND G. BROWN JR.  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 RANDY M. MAILMAN  
Deputy Attorney General  
4 State Bar No. 246134  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2442  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 3744

11 **DANTE SANTOS DIAZ**

12 **1232 E. 2nd Street, #3**  
13 **Long Beach, CA 90802**  
14 **Pharmacy Technician Registration No. TCH**  
**26083**

**ACCUSATION**

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 June 22, 1998, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 26083 to Dante Santos Diaz ("Respondent"). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on February 29, 2012, unless renewed.

25 **STATUTORY PROVISIONS**

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.

1  
2 4. Section 118, subdivision (b), of the Code provides that the expiration of a license  
3 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period  
4 within which the license may be renewed, restored, reissued or reinstated.

5 5. Section 492 of the Code states, in pertinent part:

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

14 6. Section 4301 of the Code states, in pertinent part:

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

18 ...

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

21 7. Section 4060 of the Code states, in pertinent part:

22 "No person shall possess any controlled substance, except that furnished to a person upon  
23 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic  
24 doctor..."

25 **CONTROLLED SUBSTANCE- DANGEROUS DRUGS**

26 8. "Cocaine" is designated as a Schedule II substance under the Controlled Substances  
27 Act under Health and Safety Code section 11055(b)(6), and is a dangerous drug pursuant to  
28 Business and Professions Code section 4022.

1 **COSTS**

2 9. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Possession of a Controlled Substance)**

8 10. Respondent is subject to disciplinary action under Code sections 4060 and 4301,  
9 subdivisions (j), on the grounds of unprofessional conduct in that Respondent was found in  
10 possession of cocaine, a violation of Health and Safety Code section 11350, subdivision (a). The  
11 conduct is more particularly described as follows:

12 a. On or about January 2, 2010, a security guard at the Avalon nightclub in Hollywood,  
13 observed Respondent engage in a hand to hand drug sale transaction.

14 b. The security guard confronted Respondent and found 1.08 grams of cocaine in  
15 Respondent's hand.

16 c. Respondent was booked into the Hollywood jail for possession of cocaine.

17 d. On or about January 5, 2010, Los Angeles County District Attorney's Office filed  
18 criminal charges against Respondent for violating Health and Safety Code section 11350,  
19 possession of cocaine, a felony.

20 e. On or about March 9, 2010, Respondent entered a plea of guilty to violating Health  
21 and Safety Code section 11350, possession of cocaine, a felony.

22 f. On that same day, the sentencing judge deferred entry of judgment pursuant to Penal  
23 Code section 1001.2 for a period of 18 months.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct)**

26 11. Respondent is subject to disciplinary action under Code section 4301, in that  
27 Respondent engaged in unprofessional conduct. Respondent committed acts constituting  
28



unprofessional conduct, as more particularly set forth in paragraph 10, subdivisions (a) through (f), above.

PRAYER

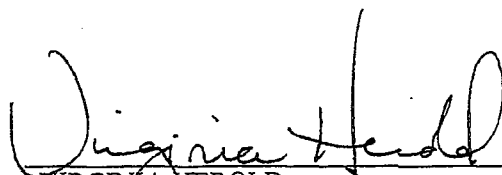
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 26083, issued to Dante Santos Diaz.

2. Ordering Dante Santos Diaz 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: 8/23/10



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

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