

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:
GARY FULTON CALLAHAN
23 Los Coyotes Drive
Phillips Ranch, CA 91766
Designated Representative License No. EXC
16432

Respondent.

Case No. 3756
OAH No. L-2011050173
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 8, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 3756 against Gary Fulton Callahan (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 1, 2001, the Board of Pharmacy issued Designated Representative License No. EXC 16432 to Respondent. The Designated Representative License was in full force and effect at all times relevant to the charges brought in Accusation No. L-2011050173 and will expire on November 1, 2011, unless renewed

3. On or about March 14, 2011, Respondent was served by Rebeca Garcia copies of the Accusation No. 3756, at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board, which was and is:

23 Los Coyotes Drive
Phillips Ranch, CA 91766.

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

4 5. Respondent timely signed and returned a Notice of Defense, requesting a hearing in
5 this matter. A Notice of Hearing was served by mail at Respondent's address of record and it
6 informed him that an administrative hearing in this matter was scheduled for September 29, 2011.
7 Respondent failed to appear at that hearing.

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

9 ...

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

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

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 3756, finds that
25 the charges and allegations in Accusation No. 3756, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

27 9. Taking official notice of its own internal records, pursuant to Business and
28 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement is \$1,680.00 as of September 23, 2011.

///

///

1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Gary Fulton Callahan has
3 subjected his Designated Representative License No. EXC 16432 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 Designated
6 Representative License based upon the following violations alleged in the Accusation which are
7 supported by the evidence contained in the Default Decision Evidence Packet in this case:

8 Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (1),
9 on the grounds of unprofessional conduct, in that he was convicted of crimes substantially related
10 to the qualifications, functions, and duties of a designated representative which to a substantial
11 degree evidence his present or potential unfitness to perform the functions authorized by his
12 license in a manner consistent with the public health, safety, or welfare, as follows:

13 On or about December 16, 2008, after pleading nolo contendere, Respondent was convicted
14 of one misdemeanor count of violating Penal Code section 647(b) [disorderly conduct:
15 prostitution] in the criminal proceeding entitled *The People of the State of California v. Gary*
16 *Fulton Callahan* (Super. Ct. San Bernardino County, 2008, No. MWV806531).

17 On or about October 3, 2006, after pleading nolo contendere, Respondent was convicted of
18 one misdemeanor count of violating Penal Code section 647(a) [disorderly conduct: solicit lewd
19 act] in the criminal proceeding entitled *The People of the State of California v. Gary Fulton*
20 *Callahan* (Super. Ct. San Bernardino County, 2006, No. MWV106290).

21 On or about June 21, 2005, after finding of guilty by a jury, Respondent was convicted of
22 one misdemeanor count of violating Penal Code section 647(b) [solicit act of prostitution] in the
23 criminal proceeding entitled *The People of the State of California v. Gary Fulton Callahan*
24 (Super. Ct. Los Angeles County, 2005, No. 5PM03120).

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

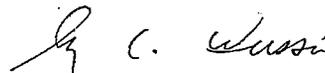
ORDER

IT IS SO ORDERED that Designated Representative License No. EXC 16432, heretofore issued to Respondent Gary Fulton Callahan, 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 May 4, 2012.

It is so ORDERED on April 4, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF



By

STANLEY C. WEISSER
Board President

60690140.DOC
DOJ Matter ID:LA2010600962

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2579
6 Facsimile: (213) 897-2804
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. 3756

11 **GARY FULTON CALLAHAN**
12 23 Los Coyotes Drive
Phillips Ranch, CA 91766

A C C U S A T I O N

13 Designated Representative License No. EXC 16432

14 Respondent.
15

16
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 (Board).

22 2. On or about November 30, 2001, the Board issued Designated Representative License
23 No. EXC 16432 to Gary Fulton Callahan (Respondent). The Designated Representative License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 November 1, 2011, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

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

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

9 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
10 revoked."

11 7. Section 4301 states, in pertinent part:

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

15

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

19

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

22

23 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
24 violation of or conspiring to violate any provision or term of this chapter or of the applicable
25 federal and state laws and regulations governing pharmacy, including regulations established by
26 the board or by any other state or federal regulatory agency. . . ."

27 ///

28 ///

1 **REGULATORY PROVISION**

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

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

9 **COST RECOVERY**

10 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
11 law judge to direct a licentiate found to have committed a violation or violations of the licensing
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
13 case.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Convictions of Substantially Related Crimes)**

16 10. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
17 (l), on the grounds of unprofessional conduct, in that he was convicted of crimes substantially
18 related to the qualifications, functions, and duties of a designated representative which to a
19 substantial degree evidence his present or potential unfitness to perform the functions authorized
20 by his license in a manner consistent with the public health, safety, or welfare, as follows:

21 a. On or about December 16, 2008, after pleading nolo contendere, Respondent was
22 convicted of one misdemeanor count of violating Penal Code section 647(b) [disorderly conduct:
23 prostitution] in the criminal proceeding entitled *The People of the State of California v. Gary*
24 *Fulton Callahan* (Super. Ct. San Bernardino County, 2008, No. MWV806531). The Court
25 sentenced Respondent to 30 days in jail, placed him on 24 months probation, ordered him to
26 complete an HIV Antibody Test and an AIDS Education Program, and ordered him to stay away
27 from: Hold Blvd from Benson to Guasti and Mission Blvd from San Antonio to Benson.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct / Violate Pharmacy Law)**

3 12. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
4 that Respondent committed acts of unprofessional conduct violating pharmacy law. Complainant
5 refers to and by this reference incorporates the allegations set forth above in paragraphs 10 – 11,
6 inclusive, as though set forth fully.

7 **PRAYER**

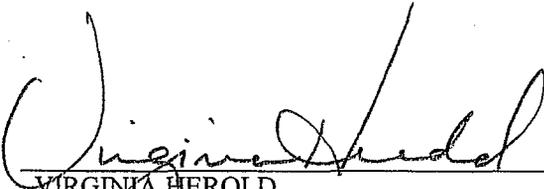
8 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
9 and that following the hearing, the Board issue a decision:

10 1. Revoking or suspending Designated Representative License No. EXC 16432, issued
11 to Respondent;

12 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
13 enforcement of this case, pursuant to section 125.3; and,

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

15
16
17 DATED: 3/8/11

18 
19 VIRGINIA HEROLD
20 Executive Officer
21 Board of Pharmacy
22 Department of Consumer Affairs
23 State of California
24 Complainant

22 LA2010600962
23 10/28/2010dmm
24 60573727.doc