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

10 In the Matter of the Accusation Against:

Case No. 3788

11 **MIGUEL A. CHAVEZ**  
12 **632 North Highland Street**  
13 **Orange, CA 92867**

**DEFAULT DECISION AND ORDER**

14 **Pharmacy Technician Registration**  
15 **No. TCH 65899**

[Gov. Code, §11520]

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about January 4, 2011, Complainant Virginia Herold, in her official capacity as  
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
20 Accusation No. 3788 against Miguel A. Chavez (Respondent) before the Board of Pharmacy.  
21 (Accusation attached as Exhibit A.)

22 2. On or about November 10, 2005, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 65899 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 October 31, 2011, unless renewed.

26 3. On or about January 11, 2011, Respondent was served by Certified and First Class  
27 Mail copies of the Accusation No. 3788, Statement to Respondent, Notice of Defense, Request  
28 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

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1 section 4100, is required to be reported and maintained with the Board, which was and is:  
2 632 North Highland Street, Orange, CA 92867.

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 section  
5 124.

6 5. On or about February 10, 2011, the aforementioned documents were returned by the  
7 U.S. Postal Service marked "Unclaimed."

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

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
16 3788.

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

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

22 9. Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
26 file at the Board's offices regarding the allegations contained in Accusation No. 3788, finds that  
27 the charges and allegations in Accusation No. 3788, are separately and severally, found to be true  
28 and correct by clear and convincing evidence.

10 Taking official notice of its own internal records, pursuant to Business and  
11 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
12 and Enforcement is \$785.00 as of March 16, 2011.

DETERMINATION OF ISSUES

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1. Based on the foregoing findings of fact, Respondent Miguel A. Chavez has subjected his Pharmacy Technician Registration No. TCH 65899 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 Evidence Packet in this case.

a. Respondent subjected his registration to discipline under Business and Professions Code sections 490 and 4301(1), in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. On or about January 26, 2010, in a criminal proceeding entitled *People of the State of California v. Miguel A. Chavez, aka Miguel Angel Chavez*, in Orange County Superior Court, case number 09HM09694, Respondent was convicted on his plea of guilty for violating Penal Code section 487, subdivision (a), grand theft by embezzlement, a misdemeanor. Between May and September 2009, while Respondent was employed by an Orange County gas station/car wash business, Respondent would ring up cash transactions as Wonder Card transactions when the customer did not use a Wonder Card and then pocket the cash. Respondent admitted he had taken the cash during the transactions. The business estimated a total financial loss of approximately \$9,245.00.

b. Respondent is subject to disciplinary action under Business and Professions Code section 4301(f), in that on or about and between May and September 2009, Respondent was dishonest and deceitful when he stole money from his employer at the gas station/car wash business.

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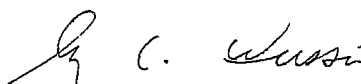
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 65899, heretofore issued to Respondent Miguel A. Chavez, 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 June 22, 2011.

It is so ORDERED May 23, 2011.



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

80475179.DOC  
DOJ Matter ID:SD2010703231

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 RITA M. LANE  
Deputy Attorney General  
4 State Bar No. 171352  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2614  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 3788

13 **MIGUEL A. CHAVEZ**  
14 **632 North Highland Street**  
**Orange, CA 92867**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 65899**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about November 10, 2005, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 65899 to Miguel A. Chavez (Respondent). The Pharmacy Technician  
25 Registration was in full force and effect at all times relevant to the charges brought herein and  
26 will expire on October 31, 2011, unless renewed.

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## JURISDICTION

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

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

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

## STATUTORY PROVISIONS

6. Section 490 of the Code states:

(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

.....

7. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order  
2 to fix the degree of discipline or to determine if the conviction is substantially related  
to the qualifications, functions, and duties of the licensee in question.

3 As used in this section, "license" includes "certificate," "permit," "authority,"  
4 and "registration."

5 8. Section 4301 of the Code states:

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

9  
10 (f) The commission of any act involving moral turpitude, dishonesty, fraud,  
11 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.

12  
13 (l) The conviction of a crime substantially related to the qualifications,  
14 functions, and duties of a licensee under this chapter. The record of conviction of a  
15 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
16 States Code regulating controlled substances or of a violation of the statutes of this  
17 state regulating controlled substances or dangerous drugs shall be conclusive  
18 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
19 be conclusive evidence only of the fact that the conviction occurred. The board may  
20 inquire into the circumstances surrounding the commission of the crime, in order to  
21 fix the degree of discipline or, in the case of a conviction not involving controlled  
22 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 judgment of  
conviction has been affirmed on appeal or when an order granting probation is made  
suspending the imposition of sentence, irrespective of a subsequent order under  
Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
dismissing the accusation, information, or indictment.

23  
24 **REGULATORY PROVISIONS**

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

26  
27 (b) When considering the suspension or revocation of a facility or a personal  
28 license on the ground that the licensee or the registrant has been convicted of a crime,



1 the board, in evaluating the rehabilitation of such person and his present eligibility for  
2 a license will consider the following criteria:

3 (1) Nature and severity of the act(s) or offense(s).

4 (2) Total criminal record.

5 (3) The time that has elapsed since commission of the act(s) or offense(s).

6 (4) Whether the licensee has complied with all terms of parole, probation,  
7 restitution or any other sanctions lawfully imposed against the licensee.

8 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

### 13 COSTS

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

### 18 FIRST CAUSE FOR DISCIPLINE

19 (January 26, 2010 Criminal Conviction for Grand Theft by Embezzlement)

20 12. Respondent subjected his registration to discipline under sections 490 and 4301,  
21 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the  
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On or about January 26, 2010, in a criminal proceeding entitled *People of the State*  
24 *of California v. Miguel A. Chavez, aka Miguel Angel Chavez*, in Orange County Superior Court,  
25 case number 09HM09694, Respondent was convicted on his plea of guilty for violating Penal  
26 Code section 487, subdivision (a), grand theft by embezzlement, a misdemeanor.

27 b. As a result of the conviction, on or about January 26, 2010, Respondent  
28 was sentenced to one day in jail (with credit for one day), and one year informal probation.

1 Respondent was further ordered to complete 60 hours of community service, pay fines, fees, and  
2 restitution in the amount of \$350.00, and comply with standard probation terms.

3 c. The circumstances that led to the conviction are that on and between May  
4 and September 2009, while Respondent was employed by an Orange County gas station/car wash  
5 business, a supervisor noticed that an unusually large amount of "Wonder Card" transactions had  
6 taken place during the time Respondent was on duty as a cashier. Customers could purchase  
7 Wonder Card passes that lasted 30 or ninety days. When a customer got a car wash, the ticket  
8 taker would write down the license plate number on a ticket and give the ticket to the customer.  
9 The customer would then take the ticket to the cash register to pay for the car wash. Respondent  
10 would ring up cash transactions as Wonder Card transactions when the customer did not use a  
11 Wonder Card and then pocket the cash. When confronted with the allegations by supervisors,  
12 Respondent admitted he had taken the cash during the transactions. The business estimated a  
13 total financial loss of approximately \$9,245.00. Respondent was subsequently arrested for grand  
14 theft by the Newport Beach Police Department on or about October 20, 2009.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Commission of Acts Involving Dishonesty, Fraud & Deceit)**

17 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the  
18 Code in that on or about and between May and September 2009, Respondent stole money from  
19 his employer using dishonesty, fraud, and deceit, as detailed in paragraph 12, above.

20 **PRAYER**

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

23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 65899,  
24 issued to Miguel A. Chavez;

25 2. Ordering Miguel A. Chavez to pay the Board of Pharmacy the reasonable costs of the  
26 investigation and enforcement of this case, pursuant to Business and Professions Code section  
27 125.3;

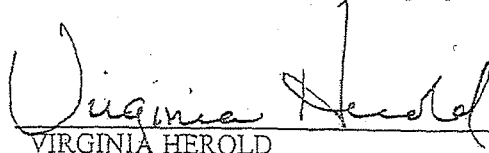
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3. Taking such other and further action as deemed necessary and proper.

DATED: \_\_\_\_\_

1/4/11



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

SD2010703231