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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. 3808

VALERIE MARIE SMITH
3901 Von Savoye Lane
Modesto, CA 95355

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Pharmacy Technician Registration
No. TCH 74169

Respondent.

FINDINGS OF FACT

1. On or about June 30, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 3808 against Valerie Marie Smith (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 18, 2007, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 74169 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3808 and expired on January 31, 2013.

3. On or about July 21, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 3808, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
2 is required to be reported and maintained with the Board, which was and is:

3 3901 Von Savoye Lane
4 Modesto, CA 95355

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

7 5. On or about July 25, 2011, the U.S. Postal Service returned a Domestic Return
8 Receipt for the Accusation that was signed by "Steve Smith."

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 her of
16 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 3808.

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. 3808, finds that
27 the charges and allegations in Accusation No. 3808, 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 \$850.00 as of November 22, 2011.

DETERMINATION OF ISSUES

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2 1. Based on the foregoing findings of fact, Respondent Valerie Marie Smith has.
3 subjected her Pharmacy Technician Registration No. TCH 74169 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 Registration based upon the following violations alleged in the Accusation which are supported
7 by the evidence contained in the Default Decision Evidence Packet in this case.:

8 a. Respondent is subject to disciplinary action under sections 4301(l), 4301(f), and
9 4301(h) in that on or about March 15, 2010 in the case of *People of the State of California v.*
10 *Valeria Marie Smith* (Stanislaus County Superior Court Case No. MDP 09-102040), Respondent
11 was convicted by guilty plea of violating Penal Code section 459 (second degree burglary), a
12 felony, and Health and Safety Code section 11350(a) (possession of a controlled substance –
13 heroin), a felony. The circumstances are that on or about December 4, 2009, Respondent did
14 willfully, unlawfully, and feloniously enter a building, belonging to another, to wit, F.Y.E. Retail
15 Store, located in Stanislaus County, and with the intent then and there and therein to commit theft
16 or any other felony offense and that Respondent did willfully, unlawfully, and feloniously have in
17 her possession a controlled substance, to wit, heroin.

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ORDER

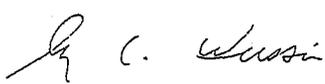
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IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 74169, heretofore issued to Respondent Valerie Marie Smith, is revoked.

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 26, 2012.

It is so ORDERED February 23, 2012.



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

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **VALERIE MARIE SMITH**
13 **3901 Von Savoye Lane**
14 **Modesto, CA 95355**
15 **Pharmacy Technician Registration No. TCH**
16 **74169**
17 Respondent.

Case No. 3808

ACCUSATION

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 July 18, 2007, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 74169 to Valerie Marie Smith (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 January 31, 2013, 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 unless otherwise indicated.

4. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

...

"(f) The commission of any act involving moral turpitude, dishonesty, fraud, 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.

...

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

...

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the 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

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Conviction of a Crime)

15 6. Respondent is subject to disciplinary action under section 4301(l) in that on or about
16 March 1, 2010 in the case of *People of the State of California v. Valeria Marie Smith* (Stanislaus
17 County Superior Court Case No. MDP 09-102040), Respondent was convicted by guilty plea of
18 violating Penal Code section 459 (second degree burglary), a felony, and Health and Safety Code
19 section 11350(a) (possession of a controlled substance – heroin), a felony. The circumstances are
20 that on or about December 4, 2009, Respondent did willfully, unlawfully, and feloniously enter a
21 building, belonging to another, to wit, F.Y.E. Retail Store, located in Stanislaus County, and with
22 the intent then and there and therein to commit theft or any other felony offense and that
23 Respondent did willfully, unlawfully, and feloniously have in her possession a controlled
24 substance, to wit, heroin.

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SECOND CAUSE FOR DISCIPLINE

(Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

7. Respondent is subject to disciplinary action under section 4301 (f) in that she did commit and was arrested for second degree burglary and/or petty theft and/or was an accessory after the fact to said crimes, as alleged in paragraph 6.

THIRD CAUSE FOR DISCIPLINE

(Possession and Use of a Controlled Substance)

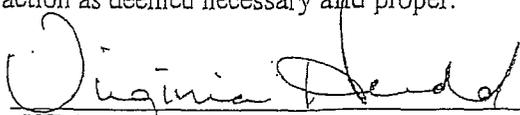
8. Respondent is subject to disciplinary action under section 4301(h) in that she did commit and was arrested for possession of a controlled substance, as alleged in paragraph 6. Respondent also admitted on or about December 4, 2009 during her arrest by a Modesto Police Officer, that she used heroin.

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 74169, issued to Valerie Marie Smith;
- 2. Ordering Valerie Marie Smith 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: 6/30/11



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

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