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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. 4021

11 **TONY MAI**
12 **5336 Oak Park Drive**
13 **San Diego, CA 92105**

DEFAULT DECISION AND ORDER

14 **Pharmacy Technician Registration No. TCH**
15 **98224**

[Gov. Code, §11520]

16 Respondent.

17 FINDINGS OF FACT

18 1. On or about August 16, 2011, Complainant Virginia Herold, in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4021 against Tony Mai (Respondent) before the Board of Pharmacy. (Accusation
21 attached as Exhibit A.)

22 2. On or about February 26, 2010, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 98224 to Respondent. The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought in Accusation No. 4021
25 and will expire on September 30, 2011, unless renewed.

26 3. On or about August 23, 2011, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 4021, Statement to Respondent, Request for Discovery, Notice
28 of Defense (2 copies), and Government Code Sections 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: 5336 Oak Park Drive, San Diego, CA 92105.

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. Government Code section 11506 states, in pertinent part:

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

10 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
11 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
12 4021.

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

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

18 8. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
21 taking official notice of all the investigatory reports, exhibits and statements contained therein on
22 file at the Board's offices regarding the allegations contained in Accusation No. 4021, finds that
23 the charges and allegations in Accusation No. 4021, are separately and severally, found to be true
24 and correct by clear and convincing evidence.

25 9. Taking official notice of its own internal records, pursuant to Business and
26 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
27 and Enforcement is \$717.50 as of September 19, 2011.

28 DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tony Mai has subjected his
Pharmacy Technician Registration No. TCH 98224 to discipline.

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

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DOJ Matter ID:SD2011800204

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 SHERRY L. LEDAKIS
Deputy Attorney General
4 State Bar No. 131767
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2078
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4021

13 **TONY MAI**
14 **5336 Oak Park Drive**
San Diego, CA 92105

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 98224**

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 February 26, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 98224 to Tony Mai (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 September 30, 2011, unless renewed.

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

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(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 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. . . .

REGULATORY PROVISIONS

9. 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.

///

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

2 For the purpose of denial, suspension, or revocation of a personal or facility
3 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
4 Professions Code, a crime or act shall be considered substantially related to the
5 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.

6 **COSTS**

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

11 **DRUG**

12 12. Marijuana is a Schedule I controlled substance as designated by Health and Safety
13 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &
14 Professions Code section 4022.

15 **FIRST CAUSE FOR DISCIPLINE**

16 **(May 17, 2010 Criminal Conviction for Sale of Marijuana on March 30, 2010)**

17 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
18 subdivision (I) of the Code in that he was convicted of a crime that is substantially related to the
19 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

20 a. On or about April 15, 2010, in a criminal proceeding entitled *People of the*
21 *State of California v. Tony Mai*, San Diego County Superior Court, case number SD226498,
22 Respondent was convicted on his plea of guilty to violating Health and Safety Code section
23 11360, subdivision (a), sale of marijuana, a felony. An additional felony count of possessing
24 marijuana for sale (Health & Saf. Code, § 11359) was dismissed pursuant to a plea agreement.

25 b. As a result of the conviction, on or about May 17, 2010, Respondent was
26 sentenced to 240 days in jail, with credit for 97 days, and ordered to serve three years formal
27 probation, which is set to expire on May 16, 2013. Respondent was further ordered to pay \$1,974
28 in fees, fines, and restitution, and to comply with felony probation terms.

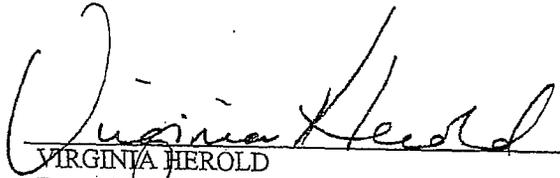
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PRAYER

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 Registration Number TCH 98224, issued to Tony Mai;
2. Ordering Tony Mai 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: 8/16/11



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

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