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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:
11 **CYNTHIA ALMARAZ**
12 **1112 Spruce Street**
13 **Corona, CA 92879**
14 **Pharmacy Technician Registration No. TCH**
15 **47494**
16 Respondent.

Case No. 4041

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

17 **FINDINGS OF FACT**

18 1. On or about August 19, 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. 4041 against Cynthia Almaraz (Respondent) before the Board of Pharmacy.
21 (Accusation attached as Exhibit A.)

22 2. On or about August 22, 2003, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 47494 to Respondent. The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought in Accusation No. 4041
25 and will expire on October 31, 2012, unless renewed.

26 3. On or about August 22, 2011, Respondent was served by First Class Mail copies of
27 the Accusation No. 4041, Statement to Respondent, Notice of Defense, Request for Discovery,
28 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

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

3 1112 Spruce Street
4 Corona, CA 92879.

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

8 5. 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 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
15 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4041.

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

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

21 8. Pursuant to its authority under Government Code section 11520, the Board finds
22 Respondent is in default. The Board will take action without further hearing and, based on the
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on
25 file at the Board's offices regarding the allegations contained in Accusation No. 4041, finds that
26 the charges and allegations in Accusation No. 4041, are separately and severally, found to be true
27 and correct by clear and convincing evidence.

28 9. 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 is \$1,875.00 as of November 8, 2011.

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Cynthia Almaraz has subjected
3 her Pharmacy Technician Registration No. TCH 47494 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 490 and 4301, subdivision
9 (l), of the Code in that on January 19, 2011, Respondent was convicted of stealing mail from
10 residential mailboxes; a crime substantially related to the qualifications, functions, and duties of a
11 pharmacy technician.

12 b. Respondent has previously been cited by the Board for a prior criminal conviction, to
13 whit forgery/ fraud occurring in September of 2010.

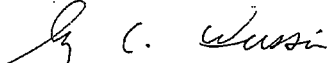
14 **ORDER**

15 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 47494, heretofore
16 issued to Respondent Cynthia Almaraz, is revoked.

17 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
18 written motion requesting that the Decision be vacated and stating the grounds relied on within
19 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
20 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

21 This Decision shall become effective on March 9, 2012.

22 It is so ORDERED February 8, 2012.

23 
24 STANLEY C. WEISSER, BOARD PRESIDENT
25 FOR THE BOARD OF PHARMACY
26 DEPARTMENT OF CONSUMER AFFAIRS

26 DOJ Matter ID:SD2011800438

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4041

12 **CYNTHIA ALMARAZ**
13 **1112 Spruce Street**
14 **Corona, CA 92879**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **47494**

Respondent.

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.

22 2. On or about August 29, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 47494 to Cynthia Almaraz (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on October 31, 2012, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 118 of the Code states:

6 ...

7 (b) The suspension, expiration, or forfeiture by operation of law of a
8 license issued by a board in the department, or its suspension, forfeiture, or
9 cancellation by order of the board or by order of a court of law, or its
10 surrender without the written consent of the board, shall not, during any
11 period in which it may be renewed, restored, reissued, or reinstated, deprive
the board of its authority to institute or continue a disciplinary proceeding
against the licensee upon any ground provided by law or to enter an order
suspending or revoking the license or otherwise taking disciplinary action
against the licensee on any such ground.

12 ...

13 5. Section 4300 of the Code states:

14 (a) Every license issued may be suspended or revoked.

15 ...

16 **STATUTORY PROVISIONS**

17 6. Section 482 of the Code states:

18 Each board under the provisions of this code shall develop criteria to
19 evaluate the rehabilitation of a person when:

20 (a) Considering the denial of a license by the board under Section 480;

21 or

22 (b) Considering suspension or revocation of a license under Section
23 490.

24 Each board shall take into account all competent evidence of
rehabilitation furnished by the applicant or licensee.

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

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8. 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 may inquire into the circumstances surrounding the commission of the crime in order 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.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

9. 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.

...

(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.

...

1 FIRST CAUSE FOR DISCIPLINE

2 (January 19, 2011 Conviction for Theft of Personal Property on October 1, 2010)

3 13. Respondent is subject to disciplinary action under section 490 and 4301, subdivision
4 (l), of the Code in that Respondent was convicted of a crime that is substantially related to the
5 qualifications, functions, and duties of a pharmacy technician. The circumstances are as follows:

6 a. On or about January 19, 2011, in a criminal proceeding entitled *People of the*
7 *State of California v. Cynthia Almaraz*, in Riverside County Superior Court, Case number
8 RM10015194, Respondent was convicted on her plea of guilty of violating Penal Code section
9 484, subdivision (a), petty theft, a misdemeanor. Respondent admitted to taking the personal
10 property of another, not exceeding \$400 in value. Respondent pled guilty to petty theft while on
11 probation for her September 2010 conviction for forgery as outlined in paragraph 15 below.

12 b. As a result of her petty theft conviction, Respondent was ordered to serve 36
13 months summary probation, ordered to serve 50 days in the county's work release program,
14 ordered to pay fines and restitution, and ordered to submit to a search by any peace officer of her
15 person or property without cause.

16 c. The circumstances that led to the conviction or that on or about October 1, 2010,
17 Respondent and friends were driving in Respondent's car. Respondent and friends decided to
18 steal mail from residential mailboxes. Respondent drove her car into residential areas and up to a
19 home's mailbox, Respondent's friends then opened the mailbox and stole the contents, after
20 which Respondent drove away.

21 SECOND CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct – Dishonesty)

23 14. Respondent is subject to disciplinary under section 4301, subdivision (f) of the Code
24 in that on or about October 1, 2010, Respondent was dishonest when she stole the personal
25 property of another, as outlined in paragraph 13 above.

26 AGGRAVATING FACTORS

27 15. In order to determine the appropriate degree of discipline to impose upon
28 Respondent, if any, Complainant alleges that Respondent has been previously cited by the

1 Board for a prior criminal conviction occurring in September of 2010. Respondent's criminal
2 conviction and the actions that led to the conviction were found by the Board to be violations of
3 Code section 4301 subdivisions (f) and (l). As a result of her violations, on November 3, 2010, a
4 citation was issued to Respondent in which she was ordered to pay \$400 in fines. Respondent
5 was ordered to pay the fines by December 3, 2010. Respondent failed to pay her fines, which
6 remain outstanding. As a result of her unpaid fines, Respondent is barred from renewing her
7 license until the fines are paid.

8 a. The circumstances of Respondent's criminal conviction are that on or about
9 September 14, 2010, in a criminal case entitled *The People of the State of California v. Cynthia*
10 *Almaraz*, in Riverside County Superior Court, case number RIM10010096, Respondent was
11 convicted on her plea of guilty of violating Penal Code section 470, subdivision (d), forgery, a
12 misdemeanor.

13 b. Respondent was sentenced to 36 months summary probation and ordered to serve
14 15 days of work release service.

15 c. The facts that led to Respondent's conviction are that on or about June 19,
16 2010, Respondent entered into a convenience store and attempted to cash a forged check. The
17 check was in the amount of \$1,573. Respondent admitted to knowing that the payee name had
18 been altered on the check, admitted to knowing the check was not intended for her and that she
19 entered the store with the intention of cashing the forged check.

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 47494,
24 issued to Cynthia Almaraz;

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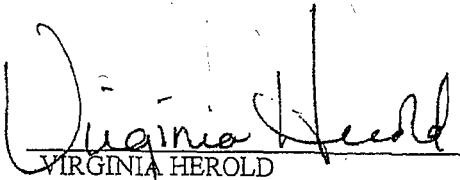
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- 2. Ordering Cynthia Almaraz to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
- 3. Taking such other and further action as deemed necessary and proper.

DATED: 8/15/11



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

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