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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. 4078

11 **JUSTIN MICHAEL VALDIVIA**  
12 **49 Blanca Lane #87**  
13 **Watsonville, CA 95076**  
14 **Pharmacy Technician Registration No. TCH**  
15 **77784**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

Respondent.

16 FINDINGS OF FACT

17 1. On or about November 16, 2011, Complainant Virginia Herold, in her official  
18 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
19 filed Accusation No. 4078 against Justin Michael Valdivia (Respondent) before the Board of  
20 Pharmacy. (Accusation attached as Exhibit A.)

21 2. On or about August 3, 2007, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 77784 to Respondent. The Pharmacy Technician Registration  
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 4078  
24 and expired on August 31, 2011. The lapse in licensure through the present, pursuant to Business  
25 and Professions Code section 118(b), does not deprive the Board of its authority to continue this  
26 action.

27 3. On or about December 13, 2011, Respondent was served by certified and regular mail  
28 copies of the Accusation No. 4078, 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 79 Blanca Lane #87  
4 Watsonville, CA 95076.

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. On or about January 13, 2012, the aforementioned certified documents were returned  
9 by the U.S. Postal Service marked "Unclaimed." The address on the documents was the same as  
10 the address on file with the Board. Respondent failed to maintain an updated address with the  
11 Board and the Board has made attempts to serve the Respondent at the address on file.  
12 Respondent has not made himself available for service and therefore, has not availed himself of  
13 his right to file a notice of defense and appear at hearing.

14 6. Additionally, on or around February 1, 2012, Respondent was again served copies of  
15 the same documents, by certified and regular mail, at 49 Blanca Lane #87, Watsonville, CA,  
16 95076. The certified documents were returned by the U.S. Postal Service marked "Unclaimed."

17 7. Government Code section 11506 states, in pertinent part:

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

23 8. Respondent failed to file a Notice of Defense within 15 days after service upon him  
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
25 4078.

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

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



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ORDER

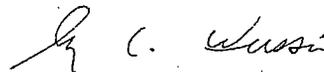
IT IS ORDERED that Pharmacy Technician Registration No. TCH 77784, heretofore issued to Respondent Justin Michael Valdivia, is revoked.

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 7, 2012.

It is so ORDERED on May 8, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER

Board President

20576154.DOC  
DOJ Matter ID:SF2011202112

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
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2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
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5 San Francisco, CA 94102-7004  
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6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 4078

11 **JUSTIN MICHAEL VALDIVIA**  
12 **79 Blanca Lane #87**  
**Watsonville, CA 95076**  
13 **Pharmacy Technician Registration No.**  
**TCH 77784**

**ACCUSATION**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about August 3, 2007, the Board of Pharmacy issued Pharmacy Technician  
21 Registration Number TCH 77784 to Justin Michael Valdivia (Respondent). The Pharmacy  
22 Technician Registration was in full force and effect at all times relevant to the charges brought  
23 herein and will expire on August 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 unless otherwise indicated.

4. Section 4300 of the Code states:

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

"(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

". . . .

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

5. 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.

STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code states:

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

4 ". . . .

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

8 ". . . .

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

26 ". . . ."

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions)**

3 10. Respondent is subject to disciplinary action under sections 490 and 4301(l) of the  
4 Code, as explained in section 1770 of title 16, California Code of Regulations, in that Respondent  
5 was convicted of a crime substantially related to the qualifications, functions, or duties of a  
6 pharmacy technician. Specifically, on or about December 10, 2010, in the Superior Court of  
7 California for the County of Santa Cruz, in a case entitled *The People of the State of California v.*  
8 *Justin Michael Valdivia*, Case No. F20057, Respondent pled no lo contendere to and was  
9 convicted of violating California Penal Code § 487(a) (grand theft of personal property), a felony,  
10 and § 484a(g) (fraudulent use of a bank access card), a felony. The circumstances of the  
11 convictions were as follows:

12 11. On or around November 10, 2010, Respondent possessed and was arrested for having  
13 roughly 250 pieces of mail not pertaining to him from various addresses mostly throughout Santa  
14 Cruz, California. Respondent further had in his possession 26 checks, a passport, and various ID  
15 cards that did not pertain to him.

16 12. In the third quarter of 2010, Respondent participated in fraudulent ATM card  
17 transactions in regard to a Bay Federal Credit Union ATM.

18 **SECOND CAUSE FOR DISCIPLINE**

19 **(Act Involving Dishonesty or Moral Turpitude)**

20 13. Respondent is subject to disciplinary action under section 4301(f) of the Code in that  
21 Respondent engaged in an act moral turpitude, dishonesty, fraud, deceit, or corruption. The  
22 circumstances are described above in the First Cause for Discipline.

23 **PRAYER**

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

26 1. Revoking or suspending Pharmacy Technician Registration Number TCH 77784,  
27 issued to Justin Michael Valdivia;

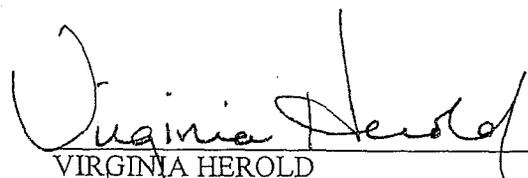
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2. Ordering Justin Michael Valdivia to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 11/16/11



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

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