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

9 In the Matter of the Accusation Against:

Case No. 4079

10 **RUSSELL R. JAVIER**
11 **4393 Tyler Street**
12 **Riverside, CA 92503**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

13 **Pharmacy Technician Registration No.**
14 **TCH 72666**

Respondent.

15 FINDINGS OF FACT

16 1. On September 1, 2011, Complainant Virginia K. Herold, in her official capacity as
17 the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs filed
18 Accusation No. 4079 against Respondent Russell R. Javier before the Board. (Accusation
19 attached as Exhibit A.)

20 2. On October 27, 2006, the Board issued Pharmacy Technician Registration No. TCH
21 72666 to Respondent. The Pharmacy Technician Registration was in full force and effect at all
22 times relevant to the charges brought in Accusation No. 4079 and will expire on May 31, 2012,
23 unless renewed.

24 3. On September 12, 2011, Respondent was served by Certified and First Class Mail
25 copies of the Accusation No. 4079, Statement to Respondent, Notice of Defense, Request for
26 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
27 Respondent's address of record which, pursuant to Business and Professions Code (Code) section
28 4100, is required to be reported and maintained with the Board, which was and is 4393 Tyler
Street Riverside, CA 92503.

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 Code section 124.

3 5. On September 20, 2011, the aforementioned documents were returned by the U.S.
4 Postal Service marked "not deliverable as addressed, unable to forward, 'no longer works here!'"

5 6. On September 20, 2011, Respondent was again served by First Class Mail copies of
6 the Accusation No. 4079, Statement to Respondent, Notice of Defense, Request for Discovery,
7 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at two other
8 addresses believed to be used by Respondent: his mother's home at 5256 Sierra Vista, Riverside,
9 CA 92505; and the address Respondent gave to officers of the Los Angeles County Sheriff's
10 Department when arrested on December 9, 2010: 1925 Batson Avenue, #68, Rowland Heights,
11 CA 91748. The envelope sent to the Sierra Vista address was never returned to the sender, and
12 the envelope sent to the Batson address was returned to the sender on October 3, 2011, marked
13 "attempted not known."

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

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

20 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4079.

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

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

28 10. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board offices regarding the allegations contained in Accusation No. 4079, finds that the
2 charges and allegations in Accusation No. 4079, are separately and severally, found to be true and
3 correct by clear and convincing evidence.

4 7. Taking official notice of its own internal records, pursuant to Code section 125.3, it is
5 hereby determined that the reasonable costs for Investigation and Enforcement are \$1,917.50 as
6 of November 17, 2011.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Russell R. Javier has subjected
9 his Pharmacy Technician Registration No. TCH 72666 to discipline.

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

11 3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration
12 based upon the following violation alleged in the Accusation which is supported by the evidence
13 contained in the Default Decision Evidence Packet in this case:

14 a. For Unprofessional Conduct – under section 4301(j) of the Code in that Respondent
15 violated Code section 4060 and United States Code, title 21, section 843 when he obtained,
16 possessed, and sold “Ecstasy,” the street name for MDMA,3,4 (methylenedioxymethampheta-
17 mine), a synthetic, psychoactive drug with a chemical structure similar to the stimulant
18 methamphetamine and the hallucinogen mescaline; and a Schedule I controlled substance under
19 California Health and Safety Code section 11054, subdivision (d)(4), and a dangerous drug
20 pursuant to Code section 4022.

21 ORDER

22 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 72666, heretofore
23 issued to Respondent Russell R. Javier, is revoked.

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

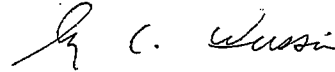
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This decision shall become effective on April 23, 2012.

It is so ORDERED on March 23, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER

Board President

Attachment: Exhibit A: Accusation

ID:SD2011800653

Exhibit A

Accusation No. 4079

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 G. MICHAEL GERMAN
Deputy Attorney General
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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. 4079

13 **RUSSELL R. JAVIER**
14 **4393 Tyler Street**
Riverside, CA 92503

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 72666**

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 October 27, 2006, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 72666 to Russell R. Javier (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 May 31, 2012, unless renewed.

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28 ///

1 8. United States Code, title 21, section 843 states, in pertinent part:

2 (a) It shall be unlawful for any person knowingly or intentionally –

3

4 (3) to acquire or obtain possession of a controlled substance by
5 misrepresentation, fraud, forgery, deception, or subterfuge;

6

7 **COST RECOVERY**

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

12 **DRUG**

13 10. Ecstasy, the street name for MDMA,3,4 (methylenedioxymethamphetamine), is a
14 Schedule I controlled substance under California Health and Safety Code section 11054,
15 subdivision (d)(4), and is classified as a dangerous drug pursuant to Business and Professions
16 Code section 4022. MDMA is a synthetic, psychoactive drug with a chemical structure similar to
17 the stimulant methamphetamine and the hallucinogen mescaline.

18 **FACTS**

19 11. On or about the afternoon of December 9, 2010, deputies from the Los Angeles
20 County Sheriff's Department conducted a traffic stop on a vehicle driven by Respondent that did
21 not have a rear license plate. Respondent consented to a personal search; the deputy located
22 \$1,638 in U.S. currency in Respondent's front pants pocket. Respondent admitted that there
23 might be something illegal in his vehicle and allowed the deputies to search it. Under the driver's
24 front seat, the deputies located a box that contained a small ziplock baggie containing six small,
25 light blue pills, which were later identified as Ecstasy. Respondent gave various scenarios as to
26 why he was in possession of \$1,638 in cash and Ecstasy. After he was arrested he admitted to the
27 deputies that he had received a UPS shipment at his residence containing 25-30 Ecstasy pills,
28 which he then sold.

1 **CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Violation of California & Federal Statutes Regulating**
3 **Controlled Substances & Dangerous Drugs)**

4 12. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
5 Code in that on or about on or about December 9, 2010, Respondent knowingly violated Business
6 and Professions Code section 4060 and United States Code, title 21, section 843 when he
7 obtained, possessed, and sold an illegal controlled substance and dangerous drug, as detailed in
8 paragraph 11, above.

9 **PRAYER**

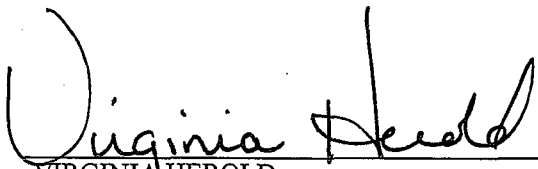
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Pharmacy issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 72666,
13 issued to Russell R. Javier

14 2. Ordering Russell R. Javier to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;

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

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19
20 DATED: 9/1/11


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

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