

BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 4282

DONOVAN GONZALEZ

8481 Holder Street
Buena Park, CA 90620

Pharmacy Technician Registration
No. TCH 109943


Respondent.

ORDER DENYING REQUEST TO VACATE DEFAULT DECISION

The Board of Pharmacy having read and considered respondent's request to vacate the Board's Default Decision effective October 15, 2012, NOW THEREFORE IT IS ORDERED that the request is denied. The Board of Pharmacy's Decision and Order effective October 15, 2012 remains in effect.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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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. 4282
DONOVAN KYLE GONZALEZ 8481 Holder Street Buena Park, CA 90620	DEFAULT DECISION AND ORDER
Pharmacy Technician Registration No. 109943 Respondent.	[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 1, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4282 against Donovan Kyle Gonzalez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about January 20, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. 109943 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4282 and will expire on October 31, 2012, unless renewed.

3. On or about June 12, 2012, Respondent was served by Certified Mail and by First Class Mail copies of Accusation No. 4282, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100 and California Code of Regulations title 16, section 1704, is required to be reported

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1 and maintained with the Board. Respondent's address of record was and is 8481 Holder Street,
2 Buena Park, CA 90620.

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

5 5. On or about July 2, 2012, the aforementioned documents were received by
6 Respondent, which was acknowledged through his signature on the receipt for certified mail with
7 reference number 7196 9008 9111 3006 2885.

8 6. Government Code section 11506 states, in pertinent part:

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

14 7. Respondent failed to file a Notice of Defense within 15 days after service upon
15 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation
16 No. 4282.

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
19 the hearing, the agency may take action based upon the respondent's express
20 admissions or upon other evidence and affidavits may be used as evidence without
21 any notice to 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. 4282, finds that
27 the charges and allegations in Accusation No. 4282, 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 Profession
11 Code section 125.3, it is hereby determined that the reasonable costs for Investigation and
12 Enforcement is \$1,275.00 as of August 13, 2012.

1 **DETERMINATION OF ISSUES**

2 1. Based on the foregoing findings of fact, Respondent Donovan Kyle Gonzalez has
3 subjected his Pharmacy Technician Registration No. 109943 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
6 Technician Registration based upon the following violations alleged in the Accusation which are
7 supported by the evidence contained in the Default Decision Evidence Packet in this case:

8 a. Respondent has subjected his license to discipline under Code sections
9 490 and 4301, subdivision (l) in that on or about September 30, 2011, in a criminal proceeding
10 entitled *The People of the State of California vs. Donovan Kyle Gonzalez*, in Orange County
11 Superior Court, Case Number 11NM15946, Respondent was convicted on his plea of guilty to
12 violating Penal Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5
13 subdivision (a), falsely reporting a crime, both misdemeanors that are substantially related to the
14 qualifications, functions, and duties of a licensed pharmacy technician.

15 b. Respondent has subjected his license to discipline under Code section
16 4301, subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of
17 the day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to
18 the police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and
19 corruption.

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ORDER

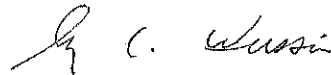
IT IS SO ORDERED that Pharmacy Technician Registration No. 109943, heretofore issued to Respondent Donovan Kyle Gonzalez, is revoked.

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 October 15, 2012.

It is so ORDERED ON September 14, 2012

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

70609364.DOC
DOJ Matter ID:SD2012703058

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:
13 **DONOVAN KYLE GONZALES**
14 **8481 Holder Street**
Buena Park, CA 90620
15 **Pharmacy Technician Registration No. 109943**
Respondent.

Case No. 4282

A C C U S A T I O N

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about January 20, 2011, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number 109943 to Donovan Kyle Gonzales (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on October 31, 2012, unless renewed.

25 **JURISDICTION**

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

1 9. Section 4301 of the Code states:

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

6

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

10

11 (l) The conviction of a crime substantially related to the qualifications,
12 functions, and duties of a licensee under this chapter. The record of conviction of
13 a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
14 United States Code regulating controlled substances or of a violation of the
15 statutes of this state regulating controlled substances or dangerous drugs shall be
16 conclusive evidence of unprofessional conduct. In all other cases, the record of
17 conviction shall be conclusive evidence only of the fact that the conviction
18 occurred. The board may inquire into the circumstances surrounding the
19 commission of the crime, in order to fix the degree of discipline or, in the case of
20 a conviction not involving controlled substances or dangerous drugs, to determine
21 if the conviction is of an offense substantially related to the qualifications,
22 functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
23 a conviction following a plea of *nolo contendere* is deemed to be a conviction
24 within the meaning of this provision. The board may take action when the time
25 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal
26 or when an order granting probation is made suspending the imposition of
27 sentence, irrespective of a subsequent order under Section 1203.4 of the Penal
28 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

10. 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.

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1 (3) The time that has elapsed since commission of the act(s) or
2 offense(s).

3 (4) Whether the licensee has complied with all terms of parole,
4 probation, restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

6 11. California Code of Regulations, title 16, section 1770, states:

7 For the purpose of denial, suspension, or revocation of a personal or
8 facility license pursuant to Division 1.5 (commencing with Section 475) of the
9 Business and Professions Code, a crime or act shall be considered substantially
10 related to the qualifications, functions or duties of a licensee or registrant if to a
11 substantial degree it evidences present or potential unfitness of a licensee or
12 registrant to perform the functions authorized by his license or registration in a
13 manner consistent with the public health, safety, or welfare.

14 **COST RECOVERY**

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

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(September 30, 2011 Criminal Convictions for Petty Theft and** 21 **Falsely Reporting A Crime on July 7, 2011)**

22 13. Respondent has subjected his license to discipline under Code sections 490 and
23 4301, subdivision (l) in that he was convicted of a crime that is substantially related to the
24 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances are as
25 follows:

26 a. On or about September 30, 2011, in a criminal proceeding entitled *The*
27 *People of the State of California vs. Donovan Kyle Gonzales*, in Orange County Superior Court,
28 Case Number 11NM15946, Respondent was convicted on his plea of guilty to violating Penal
Code (PC) sections 484 subdivision (a)/488, petty theft, and PC section 148.5 subdivision (a),
falsely reporting a crime, both misdemeanors. Charges for violation of PC sections 487,

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1 subdivision (a), grand theft of property with a value over \$950.00, and 508, embezzlement, were
2 dismissed pursuant to a plea bargain.

3 b. As a result of the convictions, on or about September 30, 2011,
4 Respondent was sentenced to three years informal probation and ordered to serve 20 days in the
5 Orange County Jail or perform 20 days of service with the California Department of
6 Transportation, in lieu of jail. Respondent was also ordered to pay \$200.00 in fines, \$140.00 in
7 fees, and restitution.

8 c. The facts that led to the conviction are that on or about the weekend before
9 July 7, 2011, Respondent and a co-conspirator planned a robbery during Respondent's nightly
10 money drop off in his job for Papa John's Pizza at a bank in Buena Park, California. On or about
11 July 7, 2011, with a bank bag containing approximately \$697.00, Respondent drove to the bank,
12 approached and unlocked the night deposit box, looked around, and returned to his parked
13 vehicle. When the co-conspirator arrived, Respondent got out of the car with the bank bag and
14 approached the night deposit box. The co-conspirator ran up to Respondent, pushed him away
15 from the night drop, grabbed the bank bag, and ran away. Respondent then called 911 to report a
16 robbery and to request assistance. Respondent admitted to setting up the ruse after an
17 investigator told him that the entire sequence of the alleged robbery was recorded through the
18 bank's surveillance cameras.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty,
21 Fraud, Deceit, or Corruption)**

22 14. Respondent has subjected his license to discipline under Code section 4301,
23 subdivision (f), in that on or about July 7, 2011, he conspired to defraud his employer of the
24 day's receipts by setting up a robbery for his personal gain, and falsely reported a robbery to the
25 police, which constitute acts involving moral turpitude, dishonesty, fraud, deceit, and corruption,
26 as detailed in paragraph 13, above.

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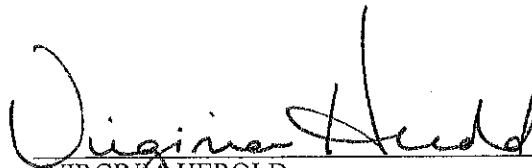
PRAYER

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 109943, issued to Donovan Kyle Gonzales;
2. Ordering Donovan Kyle Gonzales 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: _____

6/1/12



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

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