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8	BEFORE THE
	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS
9	STATE OF CALIFORNIA
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11	In the Matter of the Accusation Against: Case No. 4333
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13	JASON ALLEN ROSAL DEFAULT DECISION AND ORDER
. 14	1321 Higton Street
15	Manteca, CA 95336[Gov. Code, §11520]Pharmacy Technician License No. TCH
16	37691
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18	Respondent.
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20	FINDINGS OF FACT
21	1. On or about December 6, 2013, Complainant Virginia Herold, in her official capacity
22	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23	Accusation No. 4333 against Jason Allen Rosal (Respondent) before the Board of Pharmacy.
24	(Accusation attached as Exhibit A.)
25	2. On or about May 18, 2001, the Board of Pharmacy (Board) issued Pharmacy
26	Technician License No. TCH 37691 to Respondent. The Pharmacy Technician expired on
27	January 31, 2013, and was cancelled on May 5, 2013. However, this lapse in licensure does not
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	DEFAULT DECISION AND ORDER

deprive the Board of its authority to institute or continue this disciplinary proceeding, pursuant to
 Business and Professions Code section 118(b).

3 3. On or about January 16, 2014, Respondent was served by Certified and First Class 4 Mail copies of the Accusation No. 4333, Statement to Respondent, Notice of Defense, Request 5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code 7 section 4100, is required to be reported and maintained with the Board. Respondent's address of 8 record was and is: 1321 Higton Street, Manteca, CA 95336.

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

5. On or about January 21, 2014, the post office returned the return receipt post card
bearing Respondent's signature with a date of January 18, 2014, demonstrating that the
aforementioned documents were actually received by Respondent. Respondent failed to file a
Notice of Defense or otherwise contact the Office of the Attorney General or the Board within the
time required by statute.

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

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

7. Respondent failed to file a Notice of Defense within 15 days after service upon him

of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
4333.

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California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the 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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9. 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
 file at the Board's offices regarding the allegations contained in Accusation No. 4333, finds that
 the charges and allegations in Accusation No. 4333, are separately and severally, found to be true
 and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$1147.50 as of April 2, 2014.

DETERMINATION OF ISSUES

Based on the foregoing findings of fact, Respondent Jason Allen Rosal has subjected
 his Pharmacy Technician License No. TCH 37691 to discipline.

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The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
License based upon the following violations alleged in the Accusation which are supported by the
evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent is subject to disciplinary action for unprofessional conduct under section
 4301, subdivision (1) (conviction of a crime), in that on or about July 18, 2011, in San Joaquin
 County Superior Court, in the case entitled *People v. Jason Allen Rosal*, Case Number
 MF033605A, Respondent was convicted after his plea of guilty of violating Penal Code section

22 496, subdivision (a), (receiving known stolen property), a misdemeanor.

b. Respondent is subject to disciplinary action for unprofessional conduct under section
4301, subdivision (f), in that on dates uncertain prior to May 26, 2011, Respondent embezzled
prescription medications from his employer.

c. Respondent is subject to disciplinary action for unprofessional conduct under section
4301, subdivision (h), in that on dates uncertain prior to May 26, 2011, Respondent self-

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administered the controlled substance Methamphetamine to an extent or in a manner dangerous or
 injurious to himself or others.

d. Respondent is subject to disciplinary action for unprofessional conduct under section
4301 subdivision (j), in that on dates uncertain up to and including May 26, 2011, Respondent
violated laws governing controlled substances. Respondent violated Health and Safety Code
section 11350, subdivision (a), by possessing the controlled substance Hydrocodone without a
prescription. Respondent violated and Health and Safety Code section 11377, subdivision (a) by
possessing the controlled substance Methamphetamine without a prescription.

e. Respondent is subject to disciplinary action for unprofessional conduct under section
4301, subdivision (o) in that on dates uncertain prior to May 26, 2011, Respondent violated laws
governing pharmacy. Respondent violated Code section 4060 by possessing the dangerous drug
Cialis without a prescription. Respondent violated Code section 4060 by possessing the
dangerous drug Viagra without a prescription.

<u>ORDER</u>

IT IS SO ORDERED that Pharmacy Technician License No. TCH 37691, heretofore issued
 to Respondent Jason Allen Rosal, 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 May 30, 2014.

It is so ORDERED April 30, 2014.

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BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Jusi Bv

STAN C. WEISSER Board President

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	Attachment. Typhihit A. Accuration
	Attachment: Exhibit A: Accusation
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Exhibit A

Accusation

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1	KAMALA D. HARRIS	
2	Attorney General of California JANICE K. LACHMAN	
. 3	Supervising Deputy Attorney General JEFFREY M. PHILLIPS	
4	Deputy Attorney General State Bar No. 154990 1300 I Street, Suite 125	
5	P.O. Box 944255 Sacramento, CA 94244-2550	
6	Telephone: (916) 324-6292 Facsimile: (916) 327-8643	
· 7.	Attorneys for Complainant	
8 .	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10		
. 11	In the Matter of the Accusation Against: Case No. 4333	
12	JASON ALLEN ROSAL 1321 Higton Street	
. 13	Manteca, CA 95336 A C C U S A T I O N	
14.	Pharmacy Technician License No. TCH 37691	
15	Respondent.	• •
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17 18	Complainant alleges: PARTIES	
18	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
20	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
21	2. On or about May 18, 2001, the Board of Pharmacy issued Pharmacy Technician	
22	License Number TCH 37691 to Jason Allen Rosal (Respondent). The Pharmacy Technician	۰.
23	License was in full force and effect at all times relevant to the charges brought herein and expired	
24	on January 31, 2013, and has not been 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 unless otherwise indicated. 1 Accusation	

4. Section 4300 of the Code states in pertinent part:

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

Section 4300.1 of the Code states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

6. 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.

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

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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.

"(1) 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

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Accusation

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.

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency..."

7. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

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8. Section 4060 of the Code provides in pertinent part that no person shall possess any

15 controlled substance, except that furnished to a person upon the prescription of a physician or

16 || other specified medical professional.

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9. Health and Safety Code section 11377, subdivision (a) provides in pertinent part that
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it is illegal to possess any controlled substance specified in subdivision (d) of [Health and Safety,
19
Code] Section 11055.

10. Health and Safety Code section 11350, subdivision (a) provides in pertinent part that
it is illegal to possess any controlled substance specified in subdivision (b) of [Health and Safety
Code] Section 11055.

DRUGS

11. "Methamphetamine" is a Schedule II controlled substance as defined by Health and
Safety Code section 11055, subdivision (d), paragraph (2).

12. "Norco" is a brand name for Hydrocodone combined with acetaminophen.

27 || Hydrocodone is a Schedule II controlled substance as defined by Health and Safety Code section

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Accusation

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11055, subdivision (b), paragraph (1), subparagraph (I), and a dangerous drug as defined by Code section 4022.

13. Viagra is a brand name for the drug Sildenafil Citrate, and is a dangerous drug as defined by Code section 4022.

Cialis is a brand name for the drug Tadalafil, and is a dangerous drug as defined by 14. Code section 4022.

COST RECOVERY

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

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BACKGROUND INFORMATION

At all times relevant in this matter Respondent worked at Kaiser Pharmacy in 16. Manteca, California. On or about May 26, 2011, the Manteca Police Department searched Respondent's residence, finding 3.2 grams of Methamphetamine, paraphernalia for smoking Methamphetamine, six (g) empty prescription bottles that were not prescribed to Respondent, including Norco (Hydrocodone), Cialis, and Viagra. The prescription bottles of Hydrocodone and Viagra were empty, and the prescription bottles of Cialis contained 24 pills of Cialis.

17. Respondent admitted to stealing Hydrocodone, Cialis, and Viagra from his employer 19 for approximately the previous 7 months. Respondent explained that he would take prescriptions 20 that had been filled, but had not been picked up by the patient and would otherwise be returned to stock. Respondent stated the Methamphetamine, Cialis, and Viagra were for personal use , but he 22 did not use the Hydrocodone, he sold it to friends and acquaintances. 23

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Criminal Conviction)

Respondent is subject to disciplinary action for unprofessional conduct under section 18. 4301, subdivision (1), in that on or about July 18, 2011, in San Joaquin County Superior Court, in the case entitled People v. Jason Allen Rosal, Case Number MF033605A, Respondent was Accusation

guilty of violating Penal Code section 496, subdivision (a), (recei	ving
nisdemeanor. The circumstances are that Respondent possessed	,
be stolen from the Kaiser Pharmacy where he was employed, as a	stated
bove.	
SECOND CAUSE FOR DISCIPLINE	
onest, Fraudulent, Corrupt, and Deceitful Acts)	v .
subject to disciplinary action for unprofessional conduct under se	ction
at on dates uncertain prior to May 26, 2011, Respondent embezzl	ed
om his employer, as described in paragraphs 16 and 17, above.	
THIRD CAUSE FOR DISCIPLINE	:
nistration of Controlled Substance to an Extent or in a Manne	er
Dangerous to Himself or Others)	
subject to disciplinary action for unprofessional conduct under se	ction
at on dates uncertain prior to May 26, 2011, Respondent self-	
l substance Methamphetamine to an extent or in a manner danger	ous or
rs. The circumstances are as described in paragraph 17, above.	
FOURTH CAUSE FOR DISCIPLINE	
tion of Laws Governing Controlled Substances)	ry white
subject to disciplinary action for unprofessional conduct under se	ction
t on dates uncertain up to and including May 26, 2011, Responde	nt ,
ntrolled substances. The circumstances are as follows:	
ent violated Health and Safety Code section 11350, subdivision (a), by
ubstance Hydrocodone without a prescription.	
ent violated and Health and Safety Code section 11377, subdivisi	on (a)
d substance Methamphetamine without a prescription.	
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FIFTH CAUSE FOR DISCIPLINE

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(Violation of Laws Governing Pharmacy)

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3	22. Respondent is subject to disciplinary action for unprofessional conduct under section
4	4301, subdivision (0) in that on dates uncertain prior to May 26, 2011, Respondent violated laws
5	governing pharmacy. The circumstances are as stated in paragraphs 18-21 above, and as follows:
6	a. Respondent violated Code section 4060 by possessing the dangerous drug Cialis
7.	without a prescription.
8	b. Respondent violated Code section 4060 by possessing the dangerous drug
9	Viagra without a prescription.
10	PRAYER
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12	and that following the hearing, the Board of Pharmacy issue a decision:
13	1. Revoking or suspending Pharmacy Technician License Number TCH 37691, issued to
14	Jason Allen Rosal;
15	2. Ordering Jason Allen Rosal to pay the Board of Pharmacy the reasonable costs of the
16	investigation and enforcement of this case, pursuant to Business and Professions Code section
17	125.3;
18	"
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20	(1) (1) (1)
21	DATED: 12/6/13 Chana Aug
22	VIRGINIA/HEROLD Executive Officer
23	Board of Pharmacy Department of Consumer Affairs
24	State of California Complainant
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