1 2 3 5 7 BEFORE THE BOARD OF PHARMACY 9 DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA 10 11 12 In the Matter of the Accusation Against: Case No. 4383 13 TERESSA ANGELA DE LONG DEFAULT DECISION AND ORDER 1005 La Terrace Circle 14 San Jose, CA 95123 [Gov. Code, §11520] 15 Pharmacy Technician License No. TCH 20845 16 Respondent. 17 18 FINDINGS OF FACT 19 On or about November 8, 2012, Complainant Virginia K. Herold, in her official 1. 20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4383 against Teressa Angela De Long (Respondent) before the Board of 21 22 Pharmacy. (A copy of the Accusation is attached as exhibit A.) 2. 23 On or about December 13, 1996, the Board of Pharmacy (Board) issued Pharmacy 24 Technician License No. TCH 20845 to Respondent, The Pharmacy Technician License was in 25 full force and effect at all times relevant to the charges brought in Accusation No. 4383. The 26 License expired on December 31, 2012, and has not been renewed. Pursuant to Business and 27 Professions Code section 4300.1, this lapse in licensure does not deprive the Board of its 28 authority and jurisdiction to institute or continue this disciplinary proceeding.

	3.	On or about November 16, 2012, Respondent was served by Certified and First Class		
Mail v	with c	opies of: Accusation No. 4383; a Statement to Respondent, a Notice of Defense; a		
Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at				
Respo	ndent	's address of record, which was and is: 1005 La Terrace Circle, San Jose, CA 95123		

- 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes thereto, are required to be reported and maintained with the Board of Pharmacy (Board).
- 5. Service of the Accusation was effective as a matter of law under Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
 - 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 her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4383.
 - 8. 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.
- 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. 4383, finds that the charges and allegations in Accusation No. 4383, are separately and severally, found to be true and correct by clear and convincing evidence.

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10. Taking official notice of its internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$2,577.50 as of January 22, 2013.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Teressa Angela De Long has subjected her Pharmacy Technician License No. TCH 20845 to discipline.
 - 2. 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's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about January 25, 2012, in *People v. Teresa Angela DeLong aka Teressa Angela DeLong*, Case No. C1199890 in Santa Clara County Superior Court, Respondent was convicted of violating (1) Health and Safety Code section 11377(a) (Possession of controlled substance methamphetamine), a misdemeanor, (2) Health and Safety Code section 11364 (Possession of Controlled Substance Paraphernalia), a misdemeanor, and (3) Health and Safety Code section 11550 (Use or Being Under the Influence of Controlled Substance methamphetamine), a misdemeanor.
- b. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301(h), for self-administration of a controlled substance, in that on or about February 2, 2002 and/or on or about February 6, 2011, Respondent was found in possession of self-administered controlled substances including marijuana and methamphetamine.
- c. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) 4301(j), (o) and/or 4060, and/or Health and Safety Code section(s) 11357 and/or 11377, in that Respondent, as described above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

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- d. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301(j) or (o), and/or Health and Safety Code section 11364, in that Respondent, as described above, possessed, conspired to possess, and/or assisted in or abetted possession of, controlled substance paraphernalia.
- e. Respondent's License is subject to revocation pursuant to Business and Professions Code section(s) (j) and/or (o), and/or Health and Safety Code section(s) 11170 and/or 11550, for self-administration of a controlled substance, in that Respondent, as described above, self-administered/used, conspired to self-administer/use, and/or assisted in or abetted self-administration/use of a controlled substance.
- f. Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301, in that Respondent, as described above, engaged in unprofessional conduct.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 20845, heretofore issued to Respondent Teressa Angela De Long, 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 April 17, 2013.

It is so ORDERED ON March 18, 2013.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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TANLEY C. WEISSER oard President

DEFAULT DECISION AND ORDER

Exhibit A

Accusation

1	KAMALA D. HARRIS Attorney General of California			
2	Supervising Deputy Attorney General			
3	JOSHUA A. ROOM Deputy Attorney General			
4	State Bar No. 214663 455 Golden Gate Avenue, Suite 11000			
5	San Francisco, CA 94102-7004 Telephone: (415) 703-1299			
6	Facsimile: (415) 703-5480 Attorneys for Complainant			
7	BEFORE '	тне		
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS			
9	STATE OF CONSUMER AFFAIRS STATE OF CALIFORNIA			
10	In the Matter of the Accusation Against:	Case No. 4383		
11		Case No. 4383		
12	TERESSA ANGELA DE LONG 1005 La Terrace Circle	A C C Y C A TEL C N		
13		ACCUSATION		
14	Pharmacy Technician License No. TCH 20845			
15	Respondent.			
16	Complainant alleges:			
17	PARTIE	<u>ES</u>		
18	1. Virginia Herold (Complainant) brings th	is 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 December 13, 1996, the Board of Pharmacy issued Pharmacy Technician			
21	License No. TCH 20845 to Teressa Angela De Long (Respondent). The Pharmacy Technician			
22	License was in full force and effect at all times relevant to the charges brought herein and will			
23	expire on December 31, 2012, unless renewed.			
24				
25	<u>JURISDICTION</u>			
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.			
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- 4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.]. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 5. Section 118(b) of the Code provides, in pertinent part, 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. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

- 6. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:
- (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.
- (j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.
- (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

- (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 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.
 - 8. California Code of Regulations, title 16, section 1770, states:

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

- 9. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.
- 10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.
- 11. Health and Safety Code section 11357, in pertinent part, makes it unlawful for any person to possess marijuana or concentrated cannabis.
- 12. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess an opium pipe or other paraphernalia used to inject or smoke controlled substances.
- 13. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess any controlled substance in Schedule II, subdivision (d), without a prescription.
- 14. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

- 16. Section 4021 of the Code states:
- "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."
 - 17. Section 4022 of the Code states, in pertinent part:
- "Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, 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.
- 18. **Marijuana** is a Schedule I controlled substance as designated by Health and Safety Code section 11054(d)(13), and a dangerous drug as designated by Business and Professions Code section 4022. It is a hallucinogenic drug.
- 19. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FACTUAL BACKGROUND

20. On or about February 2, 2002, the San Jose Police Department responded to a "911" call at a residence, where they encountered Respondent. The officers observed signs that Respondent was under the influence of a controlled substance.

21. A search of the residence discovered a plastic baggie containing a green leafy substance, several plastic baggies containing white residue and one plastic baggie containing white powder, several razor blades, two wire filters, a 7mm socket with the inside burned, and a plastic straw. Respondent admitted that the green leafy substance was marijuana and said "Yeah I smoke pot." She also admitted to using methamphetamine the previous night and to being an addict. Subsequent testing of the white powder confirmed that it was methamphetamine.

22. On or about February 6, 2011, officer(s) of the San Jose Police Department conducted a premises check at a public storage facility. One of the storage units was propped open, with Respondent inside. The officer(s) observed signs that Respondent was under the influence of a stimulant. Respondent admitted to snorting and smoking **methamphetamine** for the past four (4) days. A search of a backpack belonging to Respondent discovered an eyeglass case containing a glass smoking pipe containing a white powder and/or residue. Respondent admitted to snorting and smoking **methamphetamine** for the past four (4) months. Subsequent testing of the powder or residue in the pipe confirmed it was **methamphetamine**. A blood test of Respondent was positive for the presence of **methamphetamine** (and amphetamine, a metabolite) in her system.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

23. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about January 25, 2012, in the criminal case *People v. Teresa Angela DeLong aka Teressa Angela DeLong*, Case No. C1199890 in Santa Clara County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 22 of violating (1) Health and Safety Code section 11377(a) (Possession of controlled substance – **methamphetamine**), a misdemeanor, (2) Health and Safety Code section 11364 (Possession of Controlled Substance Paraphernalia), a misdemeanor, and (3) Health and Safety Code section 11550 (Using or Being Under the Influence of Controlled Substance – **methamphetamine**), a misdemeanor. The conviction was entered as follows:

- a. On or about February 14, 2011, based on the conduct described in paragraphs 22 and 23, Respondent was charged in Case No. C1199890 with violating (1) Health and Safety Code section 11377(a) (Possession of controlled substance methamphetamine), a misdemeanor, (2) Health and Safety Code section 11364 (Possession of Controlled Substance Paraphernalia), a misdemeanor, and (3) Health and Safety Code section 11550 (Using or Being Under the Influence of Controlled Substance methamphetamine), a misdemeanor.
- b. On or about March 25, 2011, Respondent pleaded guilty to the charges upon a confirmed factual basis, and was granted entry into a Deferred Entry of Judgment (DEJ) program.
- c. On or about January 25, 2012, Respondent was convicted of all three charges in the Complaint. Imposition of sentence was suspended in favor of a term of formal probation of two (2) years, on terms and conditions including substance abuse treatment, fines, and fees.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance(s))

24. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraph(s) 20, 21, and/or 22, self-administered one or more controlled substances, on one or more occasions.

THIRD CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

25. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11357 and/or 11377, in that Respondent, as described in paragraph(s) 20, 21, and/or 22, possessed, conspired to possess, and/or assisted in or abetted possession of a controlled substance, without a prescription.

FOURTH CAUSE FOR DISCIPLINE

(Possession of Drug Paraphernalia)

26. Respondent is subject to discipline under section 4301(j) and/or (o), and/or Health and Safety Code section 11364, in that Respondent, as described in paragraph(s) 20, 21, and/or 22 possessed, conspired to possess, and/or assisted in/abetted possession of drug paraphernalia.

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1 FIFTH CAUSE FOR DISCIPLINE 2 (Self-Administration/Use of Controlled Substance(s)) 27. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code. 3 and/or Health and Safety Code section(s) 11170 and/or 11550, in that Respondent, as described in 4 paragraph(s) paragraph(s) 20, 21, and/or 22, self-administered/used, conspired to self-5 administer/use, and/or assisted in/abetted self-administration/use of a controlled substance. 6 7 SIXTH CAUSE FOR DISCIPLINE (Unprofessional Conduct) 8 28. Respondent is subject to discipline under section 4301 of the Code in that 9 10 Respondent, as described in paragraph(s) 20-27, engaged in unprofessional conduct. 11 12 PRAYER 13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, 14 and that following the hearing, the Board of Pharmacy issue a decision: 15 1. Revoking or suspending Pharmacy Technician License No. TCH 20845, issued to 16 Teressa Angela De Long (Respondent); 17 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and 18 enforcement of this case, pursuant to Business and Professions Code section 125.3; 19 3. Taking such other and further action as is deemed necessary and/proper. 20 21 22 Executive Officer 23 Board of Pharmacy Department of Consumer Affairs 24 State of California Complainant 25 26 SF2012402511 40588965,doc 27 28