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

In the Matter of the Accusation Against:

GUS A. MEJIA P.O. Box 3517 San Rafael, CA 94912

Pharmacy Technician License No. TCH 41474

Respondent.

Case No. 4459

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

1. On or about February 12, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed Accusation No. 4459 against Gus A. Mejia (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as exhibit A.)

FINDINGS OF FACT

- 2. On or about February 20, 2002, the Board issued Pharmacy Technician License No. TCH 41474 to Respondent. The License was in full force and effect at all times relevant to the charges brought in Accusation No. 4459 and will expire on September 30, 2013, unless renewed.
- 3. On or about February 28, 2013, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 4468; a Statement to Respondent, a Notice of Defense; a Request for Discovery; and Discovery Statutes (Gov.Code, §§ 11507.5, 11507.6, 11507.7) at Respondent's address of record, which was and is: P.O. Box 3517, San Rafael, CA 94912.

- 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.
- 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 on him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4459.
 - 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. 4459, finds that the charges and allegations in Accusation No. 4459, are separately and severally, found to be true and correct by clear and convincing evidence.
- 10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are \$1,897.50 as of July 3, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Gus A. Mejia has subjected his Pharmacy Technician License No. TCH 41474 to discipline.

- The agency has jurisdiction to adjudicate this case by default.
- 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.:
- Respondent's License is subject to revocation pursuant to Business and Professions Code section 4301(f), for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, in that between in or about July 2010 and in or about July 2012, Respondent engaged in several dishonest and/or deceitful acts, including (i) six (6) instances of theft, attempted theft, burglary, or attempted burglary from vendors, stores, or merchants in San Rafael, California, and (ii) two (2) instances of purchase or sale of base/rock cocaine in San Francisco, California;
- 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 11350, in that Respondent, as described above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.
- 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 conviction of substantially related crime(s), in that based on the conduct above, on or about November 23, 2011, in People v. Gustavo Mejia Contreras, Case No. CR178155A in Marin County Superior Court, Respondent was convicted of violating Penal Code section 459 (Commercial Burglary), a misdemeanor.
- 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.

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1	<u>ORDER</u>
2	IT IS SO ORDERED that Pharmacy Technician License No. TCH 41474, heretofore issued
3	to Respondent Gus A. Mejia, is revoked.
4	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5	written motion requesting that the Decision be vacated and stating the grounds relied on within
6	seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
8	This Decision shall become effective on October 14, 2013.
9	It is so ORDERED ON September 12, 2013.
10 11	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA
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14	By C. Weisser STANLEY C. WEISSER
15	STANLEY C. WEISSER Board President
16	
17	40727692.DOC DOJ Matter ID:SF2012403058
18	Attachment:
19	Exhibit A: Accusation
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Exhibit A

Accusation

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1 2	Kamala D. Harris Attorney General of California Frank H. Pacoe Supervising Deputy Attorney General
3	Joshua A. Room
4	Deputy Attorney General State Bar No. 214663
5	455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004
6	Telephone: (415) 703-1299 Facsimile: (415) 703-5480
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. 4459
	GUS A. MEJIA
12	aka GUSTAVO MEJIA CONTRERAS P.O. Box 3517 A C C U S A T I O N
13	San Rafael, CA 94912
14	Pharmacy Technician License No. TCH 41474
15	Respondent.
16	
17	Complainant alleges:
18	<u>PARTIES</u>
19	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 February 20, 2002, the Board of Pharmacy issued Pharmacy Technician
.22	License No. TCH 41474 to Gus A. Mejia aka Gustavo Mejia Contreras (Respondent). The
23	Pharmacy Technician License was in full force and effect at all times relevant to the charges
24	brought herein and will expire on September 30, 2013, 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.

- 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.].
- 5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 6. 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 if canceled may not be reissued.

STATUTORY AND REGULATORY PROVISIONS

- 7. 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:
- (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.
- (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.

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- 8. 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.
 - 9. 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."

- 10. 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.
- 11. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s) (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

COST RECOVERY

12. 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

- 13. 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."
 - 14. 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."
- 15. Cocaine is a Schedule I (in base/rock/crack form) or Schedule II controlled substance as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

FACTUAL BACKGROUND

- 16. On or about July 6, 2010, Respondent was identified in a report to San Rafael (CA) Police, by the proprietor(s) of a travel business that Respondent had frequented, as responsible for the theft of a donation box containing \$305.00. The victim(s) identified Respondent by the photo identification he used in the business, and said they had video surveillance footage of the theft. Police investigating the complaint were not able to contact Respondent, and no action was taken.
- 17. On or about July 16, 2010, Respondent was apprehended by store security at a Rite Aid store in San Rafael after having left the store without paying for nine (9) disposable razors in his possession, valued at \$112.69. Respondent subsequently admitted the theft to the responding officer(s) from the San Rafael Police Department, and admitted to an intent to re-sell the razors.
- 18. On or about September 29, 2010, Respondent was apprehended by store security at a Macy's store in San Rafael after having left the store without paying for two (2) men's watches in his possession, valued at \$115.00. Respondent advised Macy's security staff that he stole the watches because he intended to re-sell the items to procure money for medication.
- 19. On or about October 15, 2010, based on the incidents in paragraphs 17 and 18 above, Respondent was charged, by First Amended Complaint in *People v. Gustavo Mejia Contreras*, Case No. CR171325A in Marin County Superior Court, with two counts of violating Penal Code section 490.5 (Petty Theft from a Merchant), both misdemeanors. On or about January 24, 2011, Respondent was granted diversion (12 months) on specified terms and conditions as an alternative to proceeding with the prosecution. On or about May 23 and/or November 23, 2011, Respondent was terminated from diversion due to non-compliance and criminal proceedings were reinstated. On or about November 23, 2011, the charges in this case were dismissed pursuant to a Harvey waiver (considered for sentencing), pursuant to action in Case No. CR178155A (see below).

- 20. On or about January 4, 2011, Respondent was interrupted by San Francisco Police in the midst of a transaction in which he exchanged/sold or purchased/bought base (rock/crack) cocaine for cash. A search of his person discovered two off-white rock-like substances wrapped in clear plastic, which were subsequently determined to be rock cocaine weighing 0.4 grams.
- 21. On or about January 19, 2011, Respondent was apprehended by a manager for a thrift or grocery store in San Rafael on suspicion of attempting to steal razor blades. The manager told the responding officer(s) from the San Rafael Police Department that on or about January 9, 2011 he had seen Respondent take razor blades without paying for them, and had followed him on that occasion but not apprehended him. So when Respondent came into the store on or about January 19, 2011, the store manager followed him, and observed him placing razor blades in his jacket; on this occasion, Respondent removed the razor blades from his jacket before exiting the store.
- 22. On or about April 29, 2011, Respondent was again apprehended by store security at a Safeway store in San Rafael after having left the store without paying for two (2) packages of razors in his possession, valued at \$64.00. Respondent admitted to the responding officer(s) from the San Rafael Police Department that he had taken the razors, and said he forgot to pay for them.
- 23. On or about May 16, 2011, based on the incident in paragraph 22 above, Respondent was charged, in *People v. Gustavo Mejia-Contreras*, Case No. CR175606A in Marin County Superior Court, with violating Penal Code section 490.5 (Petty Theft from a Merchant), a misdemeanor. On or about November 23, 2011, the charge was dismissed pursuant to a Harvey waiver (considered for sentencing), pursuant to action in Case No. CR178155A (see below).
- 24. On or about November 12, 2011, Respondent was apprehended by store security at a Rite Aid store in San Rafael after having left the store without paying for six (6) packages of razors in his possession, valued at \$140.00. Respondent admitted to the responding officer(s) from the San Rafael Police Department that he had come into the store intending to steal the razors, and further admitted that he sells stolen merchandise on the streets to pay for medication. A search of Respondent's property discovered six (6) men's watches with store price tags, total value \$200.00. Respondent stated that he stole the watches from a Kohl's store the previous day. Subsequent police contact with Kohl's determined that the watches did not come from Kohl's.

25. On or about November 14, 2011, based on the incident in paragraph 24, Respondent
was charged, in People v. Gustavo Mejia Contreras, Case No. CR178155A in Marin County
Superior Court, with violating Penal Code section 459 (Commercial Burglary), a misdemeanor.
On or about November 23, 2011, Respondent entered a plea of guilty and was convicted of the
misdemeanor count. Imposition of sentence was suspended in favor of a period of probation of
three (3) years on terms and conditions including thirty (30) days in county jail, fines and fees,
and stay-away orders as to all of the locations identified in paragraphs 17, 18, 22, and 24 above.

- 26. On or about July 26, 2012, Respondent was interrupted by San Francisco Police in the midst of a transaction in which he exchanged/sold or purchased/bought base (rock/crack) cocaine for cash. A search of his person discovered two off-white rock-like substances wrapped in clear plastic, which were subsequently determined to be rock cocaine weighing 1.7 grams. He was also in possession of a glass pipe of the type used to smoke/ingest/base rock cocaine.
- 27. On or about July 30, 2012, based on the incident in paragraph 26, Respondent was charged, in *People v. Ismael P. Arias, Gustavo Mejia aka Gustavo Mejia Contreras*, Case No. 12019313/12019314 in San Francisco County Superior Court, with violating (1) Health and Safety Code section 11350, subdivision (a) (Possession of Controlled Substance), a felony, and (2) Health and Safety Code section 11364.1, subdivision (a) (Possession of Unlawful Drug Paraphernalia), a misdemeanor. Those charges are still pending as of the date of this pleading.

FIRST CAUSE FOR DISCIPLINE

(Act(s) Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

28. Respondent is subject to discipline under section 4301(f) of the Code in that Respondent, as described in paragraphs 16 to 27 above, committed one or more acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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SECOND CAUSE FOR DISCIPLINE

(Possession of Controlled Substance)

29. Respondent is subject to discipline under section section(s) 4301(j), (o) and/or 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described in paragraph(s) 20 and/or 26 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

30. Respondent is subject to discipline under section 4301(1) 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, as described in paragraphs 17, 18, 22, 24, and 25 above, on or about November 23, 2011, in a criminal case titled *People v. Gustavo Mejia Contreras*, Case No. CR178155A in Marin County Superior Court, Respondent was convicted of violating Penal Code section 459 (Commercial Burglary), a misdemeanor. By virtue of Harvey waivers entered by Respondent with regard to two other pending criminal cases based on similar conduct (theft of razors from area merchants), the other pending cases were dismissed in favor of inclusion of the targeted stores in a stay-away order entered against Respondent under this conviction.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

31. Respondent is subject to discipline under section 4301 of the Code in that Respondent, as described in paragraphs 16 to 30 above, engaged in unprofessional conduct.

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 License No. TCH 41474, issued to Gus A. Mejia aka Gustavo Mejia Contreras (Respondent);
- 2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 2/12/13

VIRGINIA/HEROLD Executive Officer

Board of Pharmacy Department of Consumer Affairs

State of California Complainant

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