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

In the Matter of the Accusation Against:
MELISSA DENISE MANES
8628 Big Rock Road
Santee, CA 92071
Pharmacy Technician Registration
No. TCH 100206

Respondent.

Case No. 4479
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 1, 2013, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4479 against Melissa Denise Manes (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)
2. On or about October 19, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 100206 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4479 and will expire on January 31, 2014, unless renewed.
3. On or about March 11, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4479, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
2 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
3 and maintained with the Board. Respondent's address of record was and is:

4 8628 Big Rock Road
5 Santee, CA 92071

6 4. Service of the Accusation was effective as a matter of law under the provisions of
7 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
8 124.

9 5. On or about March 18, 2013, the aforementioned documents served by First Class
10 mail were returned by the U.S. Postal Service marked "Moved, Left No Address/Unable to
11 Forward." On or about March 28, 2013, the aforementioned documents served by Certified mail
12 were returned by the U.S. Postal Service marked "Moved, Left No Address/Unable to Forward."
13 The address on the documents was the same as the address on file with the Board. Respondent
14 failed to maintain an updated address with the Board and the Board has made attempts to serve
15 the Respondent at the address on file. Respondent has not made herself available for service and
16 therefore, has not availed herself of her right to file a notice of defense and appear at hearing.

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

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 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.

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of
22 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4479.

23 8. 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
respondent.

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on the

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 4479, finds that
4 the charges and allegations in Accusation No. 4479, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 10. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$775.00 as of April 5, 2013.

9 **DETERMINATION OF ISSUES**

10 1. Based on the foregoing findings of fact, Respondent Melissa Denise Manes has
11 subjected her Pharmacy Technician Registration No. TCH 100206 to discipline.

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

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

16 a. Respondent has subjected her registration to discipline under section 4301,
17 subdivision (h) of the Code for unprofessional conduct in that she was under the influence of the
18 controlled substances methamphetamine and heroin on December 9, 2011.

19 b. Respondent has subjected her registration to disciplinary action under section
20 4301, subdivision (j) of the Code for unprofessional conduct in that on or about December 9,
21 2011, Respondent was under the influence of illegal controlled substances which violated Health
22 and Safety Code section 11550, subdivision (a).

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ORDER

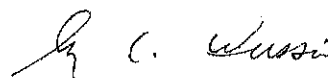
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 100206, heretofore issued to Respondent Melissa Denise Manes, is revoked.

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 July 11, 2013.

It is so ORDERED ON June 11, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

DOJ Matter ID: SD2012704443

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:
13 **MELISSA DENISE MANES**
14 **8628 Big Rock Road**
Santee, CA 92071
15 **Pharmacy Technician Registration No.**
TCH 100206
16
17 Respondent.

Case No. 4479
A C C U S A T I O N

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 19, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 100206 to Melissa Denise Manes (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on January 31, 2014, unless renewed.

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1 This section shall not be construed to apply to any drug diversion program
2 operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

3 9. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding conducted by a
5 board within the department pursuant to law to deny an application for a license or to
6 suspend or revoke a license or otherwise take disciplinary action against a person who
7 holds a license, upon the ground that the applicant or the licensee has been convicted
8 of a crime substantially related to the qualifications, functions, and duties of the
9 licensee in question, the record of conviction of the crime shall be conclusive
evidence of the fact that the conviction occurred, but only of that fact, and the board
may inquire into the circumstances surrounding the commission of the crime in order
to fix the degree of discipline or to determine if the conviction is substantially related
to the qualifications, functions, and duties of the licensee in question.

10 As used in this section, "license" includes "certificate," "permit," "authority,"
and "registration."

11 10. Section 4022 of the Code states

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

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

15 (b) Any device that bears the statement: "Caution: federal law restricts this
16 device to sale by or on the order of a _____," "Rx only," or words of similar
17 import, the blank to be filled in with the designation of the practitioner licensed to use
or order use of the device.

18 (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.

19 11. Section 4301 of the Code states:

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

23

24 (h) The administering to oneself, of any controlled substance, or the use of any
25 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
26 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.

27

28 (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 **REGULATORY PROVISIONS**

2 12. California Code of Regulations, title 16, section 1770, states:

3 For the purpose of denial, suspension, or revocation of a personal or facility
4 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
5 Professions Code, a crime or act shall be considered substantially related to the
6 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 his license or registration in a manner consistent with the
public health, safety, or welfare.

7 **COST RECOVERY**

8 13. 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 **DRUGS**

13 14. Methamphetamine is a Schedule II controlled substance pursuant to Health and
14 Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Business and
15 Professions Code section 4022.

16 15. Heroin is a Schedule I controlled substance pursuant to Health and Safety Code
17 section 11054, subdivision (c)(11), and a dangerous drug pursuant to Business and Professions
18 Code section 4022.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(Under the Influence of Controlled Substances on December 9, 2011)**

21 16. Respondent has subjected her registration to discipline under section 4301,
22 subdivision (h) of the Code for unprofessional conduct in that she was under the influence of the
23 controlled substances methamphetamine and heroin on December 9, 2011. The circumstances are
24 as follows:

25 a. On or about the evening of December 9, 2011, deputies from the San Diego
26 County Sheriff's Department were dispatched to assist in a contact with Respondent and her male
27 companion (QH). During a search of QH's truck, the deputies found heroin, methamphetamine,
28 syringes, controlled substance smoking devices, and other drug-related paraphernalia.

1 Respondent had the objective symptoms of being under the influence of a controlled substance;
2 her pupils were pinpoint and her eyes were bloodshot, she spoke in a rapid manner, and her
3 demeanor was excited. Respondent eventually admitted to the deputy that she had smoked
4 methamphetamine earlier in the day. Respondent was arrested for being under the influence of a
5 controlled substance. During booking, a blood sample was drawn from Respondent which
6 subsequently tested positive for methamphetamine/amphetamines and opiates.

7 b. As a result of the arrest, on or about February 7, 2012, in a criminal proceeding
8 entitled *People of the State of California vs. Melissa Denise Manes*, in San Diego County
9 Superior Court, case number M143472, Respondent pled guilty to violating Health and Safety
10 Code section 11550, subdivision (a), under the influence of a controlled substance, a
11 misdemeanor.

12 c. As a result of the plea, on or about February 7, 2012, Respondent entered into
13 an Agreement for Deferred Entry of Judgment for 18 months. Respondent is required to attend
14 self-help meetings, submit to drug tests, remain law abiding, and to complete the County of San
15 Diego PC 1000 program. The final review hearing is set for August 2, 2013.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Violation of State Laws Regulating Controlled Substances)**

18 17. Respondent has subjected her registration to disciplinary action under section 4301,
19 subdivision (j) of the Code for unprofessional conduct in that on or about December 9, 2011, as
20 detailed in paragraph 16, above, Respondent was under the influence of illegal controlled
21 substances which violated Health and Safety Code section 11550, subdivision (a).

22 **DISCIPLINARY CONSIDERATIONS**

23 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
24 to California Code of Regulations, title 16, section 1769, Complainant alleges:

25 a. On or about June 30, 2008, Respondent was arrested for drug-related crimes.
26 On July 7, 2008, in a criminal proceeding entitled *People of the State of California vs. Melissa*
27 *Denise Manes*, in San Diego County Superior Court, case number CD214556, a complaint was
28 filed charging Respondent with violating Health and Safety Code section 11378, possession of

1 methamphetamine for sale; and Health and Safety Code section 11366, maintaining a place for
2 the purpose of unlawfully selling/giving away/using a controlled substance, felonies.

3 b. As a result of the complaint, on or about August 26, 2008, Respondent entered
4 a plea of guilty to both counts and was referred to Drug Court. On September 16, 2008, the Drug
5 Court deferred its entry of judgment pursuant to Penal Code section 1000. Respondent was
6 placed on formal probation for three years, and ordered to complete a drug treatment program.
7 Respondent was admonished that failure to complete the treatment program could result in a two-
8 year prison sentence. Respondent was further ordered to submit to drug testing, submit to a
9 Fourth Amendment waiver, and to comply with probation terms.

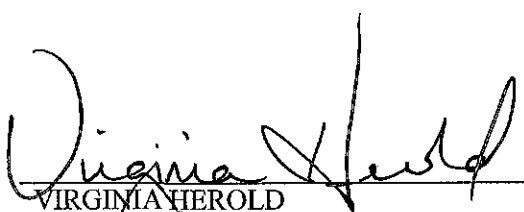
10 c. On or about June 22, 2010, following Respondent's successful completion of
11 Drug Court, Respondent was permitted to withdraw her plea of guilty, and the case was
12 dismissed.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 100206,
17 issued to Melissa Denise Manes;
- 18 2. Ordering Melissa Denise Manes to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;
- 21 3. Taking such other and further action as deemed necessary and proper.
- 22

23
24 DATED: 3/1/13

25 
26 VIRGINIA HEROLD
27 Executive Officer
28 Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

SD2012704443