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

12 In the Matter of the Accusation Against:

Case No. 4586

13 **RICHARD C. HWANG**

14 18405 S. Vermont Ave., #101  
15 Gardena, CA 90248

**DEFAULT DECISION AND ORDER**

16 Pharmacy Technician Registration No. TCH  
17 85004

[Gov. Code, §11520]

18 Respondent.

19 **FINDINGS OF FACT**

20 1. On or about June 10, 2013, Complainant Virginia K. Herold, in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed  
22 Accusation No. 4586 against Richard C. Hwang (Respondent) before the Board of Pharmacy.  
23 (Accusation attached as Exhibit A.)

24 2. On or about September 10, 2008, the Board of Pharmacy (Board) issued Pharmacy  
25 Technician Registration No. TCH 85004 to Respondent. The Pharmacy Technician Registration  
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 4586  
27 and will expire on October 31, 2013, unless renewed.  
28

1       3.     On or about June 20, 2013, Respondent was served by Certified and First Class Mail  
2 copies of the Accusation No. 4586, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board. Respondent's address of record was  
6 and is:

7     18405 S. Vermont Ave., #101  
8     Gardena, CA 90248

9       4.     Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
11 124.

12       5.     On or about June 27, 2013, the aforementioned documents were returned by the U.S.  
13 Postal Service marked "No Forwarding Address." The address on the documents was the same as  
14 the address on file with the Board. Respondent failed to maintain an updated address with the  
15 Board and the Board has made attempts to serve the Respondent at the address on file.  
16 Respondent has not made himself available for service and therefore, has not availed himself of  
17 his right to file a notice of defense and appear at hearing.

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

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

24       7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
26 4586.

27       8.     California Government Code section 11520 states, in pertinent part:

28             (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. 4586, finds that the charges and allegations in Accusation No. 4586, 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 is \$995.00 as of July 22, 2013.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Richard C. Hwang has subjected his Pharmacy Technician Registration No. TCH 85004 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 Registration 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 under section 490 and section 4301, subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section 1770 on the grounds of unprofessional conduct in that Respondent was convicted of a substantially related crime. Specifically, on or about May 24, 2012, Respondent pled nolo contendere to and was convicted of one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal proceeding entitled *People of the State of California v. Richard C. Hwang* (Super. Ct. of California, County of Los Angeles, 2012, Case No. 2SY02764). The court placed Respondent on probation for a period of three (3) years, with terms and conditions. The circumstances underlying the criminal conviction are that on or about January 29, 2012, Redondo Beach Police Department Officers ("Officers") responded to a theft in progress at an Albertsons in Redondo Beach, California. Officers made contact with Respondent and Respondent told the

1 Officers that he had stolen Rogaine from Albertsons. Officers observed two bulges in  
2 Respondent's pants and removed two (2) bottles of Rogaine. Respondent admitted to having  
3 several bottles of stolen Head and Shoulders shampoo which he stole from an Albertsons in  
4 Gardena. Officers searched Respondent's vehicle and recovered ten (10) bottles of Head &  
5 Shoulders shampoo in the back seat passenger side floorboard. While searching Respondent's  
6 vehicle, Officers also located tin foil and rolled piece of stock paper, with black tar residue which  
7 resembled Heroin, on the driver's side floorboard. Respondent admitted that he is addicted to  
8 Heroin and that he smokes Heroin.

9 b. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the  
10 Code on the grounds of unprofessional conduct in that Respondent committed an act involving  
11 dishonesty when on or about January 29, 2012, Respondent took two (2) bottles of Rogaine from  
12 Albertsons without paying for it and possessed ten (10) stolen bottles of Head & Shoulders  
13 shampoo.

14 c. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
15 Code on the grounds of unprofessional conduct in that Respondent violated provisions of the  
16 licensing chapter.

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**ORDER**

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 85004, heretofore issued to Respondent Richard C. Hwang, 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 25, 2013.

It is so ORDERED ON September 25, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By 

STAN C. WEISSER  
Board President

51335030.DOC  
DOJ Matter ID:LA2013508773

Attachment:  
Exhibit A: Accusation

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Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 KATHERINE MESSANA  
Deputy Attorney General  
4 State Bar No. 272953  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2554  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4586

13 **RICHARD C. HWANG**

14 18405 S. Vermont Ave., #101  
Gardena, CA 90248

**A C C U S A T I O N**

15 Pharmacy Technician Registration No. TCH  
85004

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about September 10, 2008, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 85004 to Richard C. Hwang ("Respondent"). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on October 31, 2013, unless renewed.

26 **JURISDICTION AND STATUTORY PROVISIONS**

27 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of  
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions Code ("Code") unless otherwise indicated.

2 4. Section 118, subdivision (b), of the Code provides that the suspension, expiration,  
3 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a  
4 disciplinary action during the period within which the license may be renewed, restored, reissued  
5 or reinstated.

6 5. Section 490 of the Code states, in pertinent part:

7 "(a) In addition to any other action that a board is permitted to take  
8 against a licensee, a board may suspend or revoke a license on the ground that the  
9 licensee has been convicted of a crime, if the crime is substantially related to the  
10 qualifications, functions, or duties of the business or profession for which the license  
11 was issued.

12 (b) Notwithstanding any other provision of law, a board may exercise any  
13 authority to discipline a licensee for conviction of a crime that is independent of the  
14 authority granted under subdivision (a) only if the crime is substantially related to the  
15 qualifications, functions, or duties of the business or profession for which the  
16 licensee's license was issued.

17 (c) A conviction within the meaning of this section means a plea or  
18 verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
19 a board is permitted to take following the establishment of a conviction may be taken  
20 when the time for appeal has elapsed, or the judgment of conviction has been  
21 affirmed on appeal, or when an order granting probation is made suspending the  
22 imposition of sentence, irrespective of a subsequent order under the provisions of  
23 Section 1203.4 of the Penal Code."

24 6. Section 493 of the Code states:

25 "Notwithstanding any other provision of law, in a proceeding conducted  
26 by a board within the department pursuant to law to deny an application for a license  
27 or to suspend or revoke a license or otherwise take disciplinary action against a  
28 person who holds a license, upon the ground that the applicant or the licensee has  
been convicted of a crime substantially related to the qualifications, functions, and  
duties of the 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.

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

7. Section 4301 of the Code states in pertinent part:

"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:

1  
2 (f) The commission of any act involving moral turpitude, dishonesty,  
3 fraud, deceit, or corruption, whether the act is committed in the course of relations as  
4 a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

5  
6 (l) The conviction of a crime substantially related to the qualifications,  
7 functions, and duties of a licensee under this chapter. The record of conviction of a  
8 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
9 States Code regulating controlled substances or of a violation of the statutes of this  
10 state regulating controlled substances or dangerous drugs shall be conclusive  
11 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
12 be conclusive evidence only of the fact that the conviction occurred. The board may  
13 inquire into the circumstances surrounding the commission of the crime, in order to  
14 fix the degree of discipline or, in the case of a conviction not involving controlled  
15 substances or dangerous drugs, to determine if the conviction is of an offense  
16 substantially related to the qualifications, functions, and duties of a licensee under this  
17 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
18 contendere is deemed to be a conviction within the meaning of this provision. The  
19 board may take action when the time for appeal has elapsed, or the judgment of  
20 conviction has been affirmed on appeal or when an order granting probation is made  
21 suspending the imposition of sentence, irrespective of a subsequent order under  
22 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
23 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
24 dismissing the accusation, information, or indictment.

25  
26 (o) Violating or attempting to violate, directly or indirectly, or assisting in  
27 or abetting the violation of or conspiring to violate any provision or term of this  
28 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."

### REGULATORY PROVISION

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 his license or registration in a manner  
consistent with the public health, safety, or welfare."

### COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
administrative law judge to direct a licensee 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



1 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being  
2 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be  
3 included in a stipulated settlement.

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(Substantially Related Criminal Conviction)**

6 10. Respondent is subject to disciplinary action under section 490 and section 4301,  
7 subdivision (l) of the Code in conjunction with California Code of Regulations, title 16, section  
8 1770 on the grounds of unprofessional conduct in that Respondent was convicted of a  
9 substantially related crime, as follows:

10 11. On or about May 24, 2012, Respondent pled nolo contendere to and was convicted of  
11 one misdemeanor count of violating Penal Code section 484(a) [theft] in the criminal proceeding  
12 entitled *People of the State of California v. Richard C. Hwang* (Super. Ct. of California, County  
13 of Los Angeles, 2012, Case No. 2SY02764). The court placed Respondent on probation for a  
14 period of three (3) years, with terms and conditions. The circumstances underlying the criminal  
15 conviction are, as follows:

16 12. On or about January 29, 2012, Redondo Beach Police Department Officers  
17 ("Officers") responded to a theft in progress at an Albertsons in Redondo Beach, California.  
18 Officers made contact with Respondent and Respondent told the Officers that he had stolen  
19 Rogaine from Albertsons. Officers observed two bulges in Respondent's pants and removed two  
20 (2) bottles of Rogaine. Respondent admitted to having several bottles of stolen Head and  
21 Shoulders shampoo which he stole from an Albertsons in Gardena. Officers searched  
22 Respondent's vehicle and recovered ten (10) bottles of Head & Shoulders shampoo in the back  
23 seat passenger side floorboard. While searching Respondent's vehicle, Officers also located tin  
24 foil and rolled piece of stock paper, with black tar residue which resembled Heroin, on the  
25 driver's side floorboard. Respondent admitted that he is addicted to Heroin and that he smokes  
26 Heroin.

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**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct: Act Involving Dishonesty)**

13. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code on the grounds of unprofessional conduct in that Respondent committed an act involving dishonesty when on or about January 29, 2012, Respondent took two (2) bottles of Rogaine from Albertsons without paying for it and possessed ten (10) stolen bottles of Head & Shoulders shampoo. The conduct is described in more particularity in paragraph 12 above, inclusive and hereby incorporated by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Violation of Licensing Chapter)**

14. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code on the grounds of unprofessional conduct in that Respondent violated provisions of the licensing chapter. The violations are described in more particularity in paragraphs 11 through 13 above, inclusive and hereby incorporated by reference.

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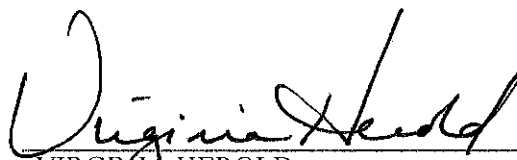
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**PRAYER**

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 TCH 85004, issued to Richard C. Hwang;
2. Ordering Richard C. Hwang 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: 6/10/13



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

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