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

In the Matter of the Accusation Against:  
  
**EDWARD GERMAN HERRERA**  
9055 Hubbard Street  
Culver City, CA 90232  
  
**Pharmacy Technician Registration**  
**No. TCH 101524**  
  
Respondent.

Case No. 4613  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about January 31, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4613 against Edward German Herrera (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about June 3, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 101524 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4613, expired on March 31, 2014, and has not been renewed.
3. On or about February 13, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4613, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
4 record was and is: 9055 Hubbard Street, Culver City, CA 90232.

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

8 5. On or about February 15, 2014, the aforementioned documents were received by  
9 certified mail at Respondent's address on file with the Board. It was confirmed by the United  
10 States Postal Service tracking system. Furthermore, a signed receipt of service of certified mail  
11 was returned. we received a certified mail receipt with a signature from Respondent's address of  
12 record.

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

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

19 7. Respondent failed to file a Notice of Defense within 15 days after service upon him  
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
21 4613.

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

23 (a) If the respondent either fails to file a notice of defense or to appear at the  
24 hearing, the agency may take action based upon the respondent's express admissions  
25 or upon other evidence and affidavits may be used as evidence without any notice to  
26 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  
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. 4613, finds that

1 the charges and allegations in Accusation No. 4613, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$4,092.00 as of April 15, 2014.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Edward German Herrera has  
8 subjected his Pharmacy Technician Registration No. TCH 101524 to discipline.

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

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

13 (a) Business and Professions Code sections 490, 4300 and 4301, subdivision (l), in  
14 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of  
15 unprofessional conduct in that Respondent was convicted of a crime substantially related to the  
16 qualifications, functions, or duties of a registered pharmacy technician as follows:

17 (i) On July 25, 2012, Respondent was charged with one felony count of violating  
18 Health and Safety Code section 11350(a) [possession of a controlled substance] and one felony  
19 count of violating Penal Code section 487(a) [grand theft by an employee in excess of \$950] in  
20 the criminal proceeding entitled *The People of the State of California v. Edward German*  
21 *Herrera*, Super Ct. Los Angeles County, 2012, No. SA081380).

22 (b) Business and Professions Code sections 4301, subdivision (j) and 492, in conjunction  
23 with section 4060, on the grounds of unprofessional conduct, in that Respondent committed an  
24 act in violation of a statute of this state, of any other state, or of the United States regulating  
25 controlled substances and dangerous drugs.

26 (c) Business and Professions Code sections 4300 and 4301, subdivision (f), on the  
27 grounds of unprofessional conduct, in that Respondent committed an act involving moral  
28

1 turpitude, dishonesty, fraud, deceit and corruption, whether the act was committed in the course  
2 of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

3 (d) Business and Professions Code section 4301, subdivision (o), on the grounds of  
4 unprofessional conduct, in that Respondent was committed an act violating the Pharmacy Act.

5 **ORDER**

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 101524, heretofore  
7 issued to Respondent Edward German Herrera, is revoked.

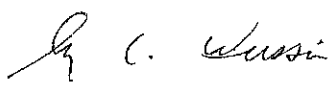
8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
9 written motion requesting that the Decision be vacated and stating the grounds relied on within  
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on June 6, 2014.

13 It is so ORDERED May 7, 2014.

14  
15 BOARD OF PHARMACY  
16 DEPARTMENT OF CONSUMER AFFAIRS  
17 STATE OF CALIFORNIA

18 By \_\_\_\_\_

19   
20 STAN C. WEISSER  
21 Board President

22  
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25 Attachment:  
26 Exhibit A: Accusation

# Exhibit A

Accusation No. 4613

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 CHRISTINE JUNE LEE  
Deputy Attorney General  
4 State Bar No. 282502  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2539  
6 Facsimile: (213) 897-2809  
*Attorneys for Complainant*  
7

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

10 In the Matter of the Accusation Against:

Case No. 4613

11 **EDWARD GERMAN HERRERA**  
12 9055 Hubbard Street  
13 Culver City, CA 90232

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

14 **Pharmacy Technician Registration No. TCH**  
**101524**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

- 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 ("Board").  
21 2. On or about June 3, 2010, the Board issued Pharmacy Technician Registration  
22 Number TCH 101524 to Edward German Herrera (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on March 31, 2014, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board, under the authority of the following  
27 laws. All section references are to the Business and Professions Code ("Code") unless otherwise  
28 indicated.

1 4. Section 4011 of the Code provides:

2 "The board shall administer and enforce this chapter [Pharmacy Law, (Business and  
3 Professions Code, Sec 4000 et esq.)] and the Uniform Controlled Substances Act (Division 10  
4 commencing with Section 11000) of the Health and Safety Code)."

5 5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or  
6 revoke a license issued by the Board.

7 6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or  
8 suspension of a board-issued license by operation of law or by order or decision of the board or a  
9 court of law, the placement of a license on a retired status, or the voluntary surrender of a license  
10 by a licensee shall not deprive the board of jurisdiction to commence or proceed with any  
11 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision  
12 suspending or revoking the license."

13 **STATUTORY PROVISIONS**

14 7. Section 490 of the Code states, in pertinent part:

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

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

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

1           8.     Section 492 of the Code states:

2           "Notwithstanding any other provision of law, successful completion of any diversion  
3 program under the Penal Code, or successful completion of an alcohol and drug problem  
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
6 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
7 division, from taking disciplinary action against a licensee or from denying a license for  
8 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
9 record pertaining to an arrest.

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

13           9.     Section 493 of the Code states:

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

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

26           10.    Section 4021 of the Code provides:

27           "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
28 11053) of Division 10 of the Health and Safety Code.



1 REGULATORY PROVISION

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

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

9 COST RECOVERY

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

14 FACTUAL ALLEGATIONS

15 20. From April 2011 to July 2012, Respondent was employed as a Pharmacy Technician  
16 at a CVS Pharmacy located in Marina Del Rey, California. On or about February 17, 2012, an  
17 internal loss reporting tool flagged the potential theft/loss of the drug hydrocodone/APAP in its  
18 January report. On February 27, 2012, an investigative team conducted a drug audit and  
19 confirmed that there was a loss of 2787 pills of hydrocodone/APAP from April 30, 2011 to  
20 February 20, 2012. Findings at that time were determined to be inconclusive. However, as part of  
21 its preventative measure, CVS Pharmacy moved all hydrocodone/APAP into its control drug safe.  
22 On or about May 2012, the same drug was flagged in its internal report with a second loss of  
23 2038 pills of hydrocodone/APAP. CVS initiated an investigation and interviews were conducted  
24 with their employees. On June 18, 2012, alprazolam was also flagged. On June 26, 2012, the CVS  
25 investigation team interviewed Respondent. Respondent admitted taking quantities of controlled  
26 substances, hydrocodone and alprazolam. Respondent admitted to stealing these medications by  
27 placing them in his socks or smock and leaving the store. On June 28, 2013, after a second set of  
28 counts for the second loss of hydrocodone/APAP, results came back with a loss of 23 pills instead

1 of the original 2038 pills. On July 5, 2012, Respondent was terminated. On August 3, 2013, the  
2 counts were completed, confirming a loss of 363 alprazolam pills. From April 2011 to June 2012,  
3 while working at the CVS Pharmacy, Respondent admitted to stealing 2,500 hydrocodone/APAP  
4 10-325 tablets and 300 alprazolam tablets for self-administration. The Los Angeles Police  
5 Department was called. Criminal charges were brought pursuant to the investigation. On June 27,  
6 2012, Respondent signed a promissory note promising to repay CVS \$1,803.98.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of a Substantially-Related Crime)**

9 21. Respondent is subject to disciplinary action under sections 490, 4300 and 4301,  
10 subdivision (I) of the Code, in conjunction with California Code of Regulations, title 16, section  
11 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime  
12 substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

13 a. On July 25, 2012, Respondent was charged with one felony count of violating Health  
14 and Safety Code section 11350(a) [possession of a controlled substance] and one felony count of  
15 violating Penal Code section 487(a) [grand theft by an employee in excess of \$950] in the  
16 criminal proceeding entitled *The People of the State of California v. Edward German Herrera*,  
17 Super Ct. Los Angeles County, 2012, No. SA081380). On August 27, 2012, the Court placed  
18 Respondent on 36 months deferred entry of judgment for violating Health and Safety Code  
19 section 11350(a). As to violating Penal Code section 487(a), Respondent was convicted, and the  
20 Court sentenced Respondent to serve 4 days in Los Angeles County jail. The Court ordered  
21 Respondent to pay restitution and placed Respondent on 3 years probation.

22 b. Complainant refers to and by this reference incorporates, the allegations set forth  
23 above in paragraph 20, as though set forth fully.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Violation of a Statute Involving Controlled Substances and Dangerous Drugs)**

26 22. Respondent is subject to disciplinary action under sections 4301, subdivision (j), 492  
27 of the Code, in conjunction with section 4060 of the Code, on the grounds of unprofessional  
28 conduct because Respondent committed an act in violation of a statute of this state, of any other

1 state, or of the United States regulating controlled substances and dangerous drugs. Complainant  
2 refers to and by this reference incorporates, the allegations set forth above in paragraph 20 as  
3 though set forth fully.

4 **THIRD CAUSE FOR DISCIPLINE**

5 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

6 23. Respondent is subject to disciplinary action under sections 4300 and 4301,  
7 subdivision (f) of the Code, on the grounds of unprofessional conduct as Respondent committed  
8 an act involving moral turpitude, dishonesty, fraud, deceit and corruption, whether the act was  
9 committed in the course of relations as a licensee or otherwise, and whether the act is a felony or  
10 misdemeanor or not. Complainant refers to, and by this reference incorporates, the allegations set  
11 forth above in paragraph 20, as though set forth fully.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 **(Violation of the Pharmacy Act)**

14 24. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the  
15 Code, on the grounds of unprofessional conduct, in that Respondent was committed an act  
16 violating the Pharmacy Act. Complainant refers to, and by this reference incorporates, the  
17 allegations set forth above in paragraphs 20 through 23, inclusive, as though set forth fully.

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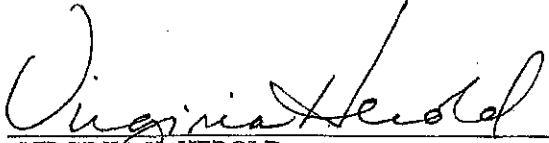
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 101524, issued to Edward German Herrera;
2. Ordering Edward German Herrera to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 1/31/14



VIRGINIA K. HEROLD  
Executive Officer  
California State Board of Pharmacy  
State of California  
*Complainant*

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9/27/13