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

In the Matter of the Accusation Against: **EFRAIN RODRIGUEZ** **1411 Mt. Whitney Drive** **San Jose, CA 95127** **Pharmacy Technician Registration No. TCH 94671** Respondent.	Case No. 4617 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 27, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4617 against Efrain Rodriguez (Respondent) before the Board of Pharmacy. (Accusation attached as exhibit A.)

2. On or about October 27, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 94671 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4617 and will expire on April 30, 2015, unless renewed.

3. On or about March 4, 2014, Respondent was served by Certified Mail copies of the Accusation No. 4617, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's

address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is:

1411 Mt. Whitney Drive
San Jose, CA 95127.

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

5. On or about March 15, 2014, the aforementioned documents were delivered to Respondent's address of record, as set forth in paragraph 3, above.

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 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4617.

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. 4617, finds that the charges and allegations in Accusation No. 4617, 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 $1,570.00 as of April 28, 2014.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Efrain Rodriguez has subjected his Pharmacy Technician Registration No. TCH 94671 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's license is subject to revocation pursuant to Business and Professions Code sections 4301, subdivision (l) and 490 in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician, as defined in title 16, California Code of Regulations section 1770. The circumstances are set forth below:

On or about December 27, 2012, in *People v. Rodriguez, Efrain Bautista Jr.*, Stanislaus County Superior Court case number 1451043, Respondent pled nolo contendere to violating Penal Code section (embezzlement by servant). Respondent was sentenced to ninety (90) days in jail, payment of fines and fees, and three years probation under terms which included, but were not limited to, restitution and a stay away order from Walgreens located at 840 Oakdale Road, in Modesto, California. The factual circumstances of the conviction are than between on or about September 1, 2012, and October 3, 2012, while employed as a pharmacy technician at Walgreens in Modesto, California, Respondent admitted to providing free merchandise to friends and family when he acted as a cashier.

b. Respondent's license is subject to revocation pursuant to Business and Professions Code section 4301, subdivision (f) in that he engaged in acts of dishonesty, as set forth in paragraph 3, subdivision (a), above.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 94671, heretofore issued to Respondent Efrain Rodriguez, 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 June 27, 2014.

It is so ORDERED May 28, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

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Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **EFRAIN RODRIGUEZ** **1411 Mt. Whitney Drive** **San Jose, CA 95127** **Pharmacy Technician Registration No. TCH 94671** Respondent.	Case No. 4617 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about October 27, 2009, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 94671 to Efrain Rodriguez (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on April 30, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the expiration 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.

STATUTORY/REGULATORY PROVISIONS

5. Section 4300 of the Code states:

"(a) Every license issued may be suspended or revoked. . ."

6. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct. . . Unprofessional conduct shall include, but is not 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.

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of

the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

6. Section 490 of the Code provides, in pertinent part, that a Board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Title 16, California Code of Regulations, 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

8. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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 enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of a Substantially Related Crime)

9. Respondent has subjected his license to disciplinary action under Code sections 4301, subdivision (l) and 490 in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician, as defined in title 16, California Code of Regulations section 1770. The circumstances are set forth in paragraph 10, below.

10. On or about December 27, 2012, in *People v. Rodriguez, Efrain Bautista Jr.*, Stanislaus County Superior Court case number 1451043, Respondent pled nolo contendere to violating Penal Code section 508 (embezzlement by servant). Respondent was sentenced to

ninety (90) days in jail, payment of fines and fees, and three years probation under terms which included, but were not limited to, restitution, a stay away order from Walgreens located at 840 Oakdale Road, in Modesto, California. The factual circumstances of the conviction are that between on or about September 1, 2012, and October 3, 2012, while employed as a pharmacy technician at Walgreens in Modesto, California, Respondent admitted to providing free merchandise to friends and family when he acted as a cashier.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of an Act Involving Dishonesty)

11. Respondent has subjected his license to disciplinary action under Code section 4301, subdivision (f) in that he engaged in unprofessional conduct by committing acts of dishonesty, namely embezzlement. The circumstances are set forth in paragraph 10, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 94671, issued to Efrain Rodriguez;

2. Ordering Efrain Rodriguez 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: 6/27/13

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

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