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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. 4618

13 **MANNUEL MACEDA CABUGOS**
14 **2230 S Loara Street #205**
15 **Anaheim, CA 92802**

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician Registration No. TCH**
17 **59049**

[Gov. Code, §11520]

18 Respondent.

19 **FINDINGS OF FACT**

20 1. On or about July 22, 2013, Complainant Virginia Herold, in her official capacity as
21 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
22 Accusation No. 4618 against Mannuel Maceda Cabugos (Respondent) before the Board of
23 Pharmacy. (Accusation attached as Exhibit A.)

24 2. On or about October 4, 2004, the Board of Pharmacy (Board) issued Pharmacy
25 Technician Registration No. TCH 59049 to Respondent. The Pharmacy Technician Registration
26 was in full force and effect at all times relevant to the charges brought in Accusation No. 4618
27 and will expire on May 31, 2014, unless renewed.

28 3. On or about August 1, 2013, Respondent was served by Certified and First Class Mail
copies of the Accusation No. 4618, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 11121 Dino Cir. 319, Garden Grove, CA 92840.

3 4. On or about September 4, 2013, Respondent was served by Certified and First Class
4 Mail copies of the Accusation No. 4618, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
7 section 4100, is required to be reported and maintained with the Board. Respondent's address of
8 record was and is: 2230 S Loara Street #205, Anaheim, CA 92802.

9 5. 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 6. On or about August 13, 2013, the signed domestic return receipt reflecting service of
13 the aforementioned documents by Certified Mail to 11121 Dino Cir. 319, Garden Grove, CA
14 92840 was returned by the U.S. Postal Service. On or about September 10, 2013, the signed
15 domestic return receipt reflecting service of the aforementioned documents by Certified Mail to
16 2230 S Loara Street #205, Anaheim, CA 92802 was returned by the U.S. Postal Service.

17 7. 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
21 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
22 may nevertheless grant a hearing.

23 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
25 4618.

26 9. California Government Code section 11520 states, in pertinent part:

27 (a) If the respondent either fails to file a notice of defense or to appear at the
28 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.

1 10. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 4618, finds that
6 the charges and allegations in Accusation No. 4618, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 11. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$790.00 as of September 26, 2013.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Mannuel Maceda Cabugos has
13 subjected his Pharmacy Technician Registration No. TCH 59049 to discipline.

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

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

18 a. Respondent subjected his pharmacy technician registration to discipline under
19 sections 490 and 4301, subdivision (l) of the Code in that on October 4, 2012, in a criminal
20 proceeding entitled *The People of the State of California vs. Mannuel Maceda Cabugos*, in Los
21 Angeles County Superior Court, Bellflower Courthouse, Case Number 2BF04549, Respondent
22 was convicted on his plea of *nolo contendere* to violating Penal Code (PC) section 487,
23 subdivision (a), grand theft by embezzlement, a misdemeanor crime that is substantially related to
24 the qualifications, functions, and duties of a registered pharmacy technician.

25 b. Respondent has subjected his pharmacy technician registration to discipline under
26 Code section 4301, subdivision (f), in that he committed acts involving moral turpitude,
27 dishonesty, fraud, deceit, and corruption when he provided 97 Cialis tablets to a customer and
28 received \$100.00 for himself instead of \$2,843.00 for his employer.

ORDER

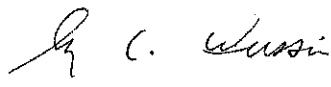
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 59049, heretofore issued to Respondent Mannuel Maceda Cabugos, is revoked.

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 January 2, 2014.

It is so ORDERED ON December 2, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA


By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:SD2013705150

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 ALFREDO TERRAZAS
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3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 4618

13 **MANNUEL MACEDA CABUGOS**

A C C U S A T I O N

14 **11121 Dino Cir. 19**

15 **Garden Grove, CA 92840**

16 **Pharmacy Technician Registration No. TCH 59049**

Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On October 4, 2004, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 59049 to Manuel Maceda Cabugos (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on May 31, 2014, 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.

1 4. Section 4300, subdivision (a), of the Code provides that every license issued by the
2 Board may be suspended or revoked.

3 5. Section 4300.1 of the Code states:

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

10 STATUTORY PROVISIONS

11 6. Section 482 of the Code states:

12 Each board under the provisions of this code shall develop criteria to
13 evaluate the rehabilitation of a person when:

14 (a) Considering the denial of a license by the board under Section 480; or

15 (b) Considering suspension or revocation of a license under Section 490.

16 Each board shall take into account all competent evidence of rehabilitation
17 furnished by the applicant or licensee.

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

22 8. Section 493 of the Code states:

23 Notwithstanding any other provision of law, successful completion of any
24 diversion program under the Penal Code, or successful completion of an alcohol
25 and drug problem assessment program under Article 5 (commencing with Section
26 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
27 any agency established under Division 2 (commencing with Section 500) of this
28 code, or any initiative act referred to in that division, from taking disciplinary
action against a licensee or from denying a license for professional misconduct,
notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest. This section shall not be construed to apply to any drug
diversion program operated by any agency established under Division 2
(commencing with Section 500) of this code, or any initiative act referred to in
that division.

29 9. Section 4301 of the Code states:

30 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

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1 misrepresentation or issued by mistake. Unprofessional conduct shall include, but
2 is not limited to, any of the following:

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

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

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19 **REGULATORY PROVISIONS**

20 10. California Code of Regulations, title 16, section 1769, states:

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22 (b) When considering the suspension or revocation of a facility or a
23 personal license on the ground that the licensee or the registrant has been
24 convicted of a crime, the board, in evaluating the rehabilitation of such person and
25 his present eligibility for a license will consider the following criteria:

- 26 (1) Nature and severity of the act(s) or offense(s).
27 (2) Total criminal record.
28 (3) The time that has elapsed since commission of the act(s) or
offense(s).

28 ///

1 (4) Whether the licensee has complied with all terms of parole,
2 probation, restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 11. California Code of Regulations, title 16, section 1770, states:

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

12 **COST RECOVERY**

13 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request
14 the administrative law judge to direct a licensee found to have committed a violation or
15 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
16 and enforcement of the case, with failure of the licensee to comply subjecting the license to not
17 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
18 may be included in a stipulated settlement.

19 **FIRST CAUSE FOR DISCIPLINE**

20 **(October 4, 2012 Criminal Conviction for Grand Theft on September 4, 2012)**

21 13. Respondent subjected his pharmacy technician registration to discipline under
22 sections 490 and 4301, subdivision (l) of the Code in that Respondent was convicted of a crime
23 that is substantially related to the qualifications, functions, and duties of a registered pharmacy
24 technician. The circumstances are as follows:

25 a. On October 4, 2012, in a criminal proceeding entitled *The People of the*
26 *State of California vs. Manuel Maceda Cabugos*, in Los Angeles County Superior Court,
27 Bellflower Courthouse, Case Number 2BF04549, Respondent was convicted on his plea of *nolo*
28 *contendere* to violating Penal Code (PC) section 487, subdivision (a), grand theft by
embezzlement, a misdemeanor.

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b. As a result of the conviction, on August 28, 2012, Respondent was granted 36 months summary probation and sentenced to serve 30 days in the Los Angeles County Jail, which was suspended with credit for one day actually served and four days for custody to be credited towards future incarceration. Respondent was also ordered to perform 15 days of community service and pay assessments, fines, and fees.

c. The facts that led to the conviction are that on September 4, 2012, while employed as a pharmacy technician at a Walgreens Store in Lakewood, California, Respondent handed a customer 97 Cialis¹ tablets worth \$2,843.00 through a drive-thru window. Respondent then received \$100.00 in cash, which he placed in his pocket. The transaction was videotaped by surveillance cameras.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Commission of Any Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

14. Respondent has subjected his pharmacy technician registration to discipline under Code section 4301, subdivision (f), in that he committed acts involving moral turpitude, dishonesty, fraud, deceit, and corruption when he provided 97 Cialis tablets to a customer and received \$100.00 for himself instead of \$2,843.00 for his employer, as described in paragraph 13, above.

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¹ CIALIS is indicated for the treatment of men with erectile dysfunction (ED), men with the signs and symptoms of benign prostatic hyperplasia (BPH).

1 **PRAYER**

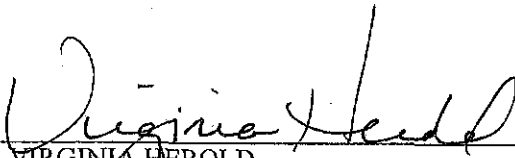
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 59049,
5 issued to Mannuel Maceda Cabugos;

6 2. Ordering Mannuel Maceda Cabugos to pay the Board of Pharmacy the reasonable
7 costs of the investigation and enforcement of this case, pursuant to Business and Professions
8 Code section 125.3;

9 3. Taking such other and further action as deemed necessary and proper.
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12
13 DATED: 7/22/13


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant
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