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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. 4698

13 **VINCENT DANIEL BELL**
14 **9044 Capceno Road**
15 **San Diego, CA 92126**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

16 **Pharmacy Technician Registration**
17 **No. TCH 112567**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about August 14, 2013, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 4698 against Vincent Daniel Bell (Respondent) before the Board of
22 Pharmacy. (The Accusation is attached as Exhibit A.)

23 2. On or about April 26, 2011, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 112567 to Respondent. The Pharmacy Technician Registration
25 expired under suspension on September 23, 2011, and has not been renewed. Section 4300.1 of
26 the Code provides, in pertinent part, that the expiration, cancellation, or suspension of a Board-
27 issued license shall not deprive the Board of jurisdiction to commence or proceed with any
28 investigation of, or action or disciplinary proceeding against, the licensee or to render a decision
suspending or revoking the license.

1 3. On or about August 22, 2013, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4698, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
6 and maintained with the Board. Respondent's address of record was and is:

7 9044 Capcano Road
8 San Diego, CA 92126

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 September 19, 2013, the aforementioned documents served by Certified
13 Mail were returned by the U.S. Postal Service marked "Unclaimed."

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

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4698.

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
27 respondent.

28 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

1 file at the Board's offices regarding the allegations contained in Accusation No. 4698, finds that
2 the charges and allegations in Accusation No. 4698, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$462.50 as of September 23, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Vincent Daniel Bell has
9 subjected his Pharmacy Technician Registration No. TCH 112567 to discipline.

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

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

14 a. Respondent has subjected his registration to discipline under sections 490 and
15 4301, subdivision (l) of the Code in that on or about August 6, 2012, in a criminal proceeding
16 entitled *People of the State of California v. Vincent D. Bell, aka Vincent Daniel Bell*, in San
17 Diego County Superior Court, case number CD242114, Respondent was convicted on his plea of
18 guilty to violating Health and Safety Code section 11550, subdivision (a), under the influence of a
19 controlled substance, to wit, methamphetamine, a misdemeanor, a crime that is substantially
20 related to the qualifications, duties, and functions of a pharmacy technician.

21 b. Respondent has subjected his registration to discipline under section 4301,
22 subdivision (h) of the Code for unprofessional conduct in that on or around July 19, 2012,
23 Respondent was under the influence of methamphetamine, conduct that was dangerous or
24 injurious to himself, and impaired Respondent's ability to safely practice as a pharmacy
25 technician.

26 c. Respondent has subjected his registration to disciplinary action under section
27 4301, subdivision (j) of the Code for unprofessional conduct in that on or about July 19, 2012,
28 Respondent's conduct violated Health and Safety Code section 11377, subdivision (a) –

1 possession of a controlled substance; Health & Safety Code section 11350, subdivision (a) –
2 under the influence of a controlled substance; and Health and Safety Code section 11364.1,
3 subdivision (a) – possession of controlled substance paraphernalia.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 112567, heretofore issued to Respondent Vincent Daniel Bell, is revoked.

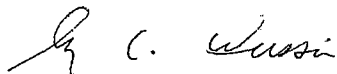
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant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

This Decision shall become effective on December 6, 2013.

It is so ORDERED ON November 6, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STAN C. WEISSER
Board President

DOJ Matter ID: SD2013705377

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

12 In the Matter of the Accusation Against:

Case No. 4698

13 **VINCENT DANIEL BELL**
14 **9044 Capcano Road**
San Diego, CA 92126

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 112567**

17 Respondent.

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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 April 26, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 112567 to Vincent Daniel Bell (Respondent). The Pharmacy
25 Technician Registration was suspended pursuant to Family Code section 17520 for failure to pay
26 family support. The Pharmacy Technician Registration expired on September 23, 2011, and has
27 not been renewed.

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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 (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states that "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. Section 482 of the Code states:

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

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

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

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

7. 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.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a 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

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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

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11 (h) The administering to oneself, of any controlled substance, or the use of any
12 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
13 dangerous or injurious to oneself, to a person holding a license under this chapter, or
14 to any other person or to the public, or to the extent that the use impairs the ability of
15 the person to conduct with safety to the public the practice authorized by the license.

16

17 (j) The violation of any of the statutes of this state, or any other state, or of the
18 United States regulating controlled substances and dangerous drugs.

19

20 (l) The conviction of a crime substantially related to the qualifications,
21 functions, and duties of a licensee under this chapter. The record of conviction of a
22 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
23 States Code regulating controlled substances or of a violation of the statutes of this
24 state regulating controlled substances or dangerous drugs shall be conclusive
25 evidence of unprofessional conduct. In all other cases, the record of conviction shall
26 be conclusive evidence only of the fact that the conviction occurred. The board may
27 inquire into the circumstances surrounding the commission of the crime, in order to
28 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.

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1 **REGULATORY PROVISIONS**

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

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

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

13 For the purpose of denial, suspension, or revocation of a personal or facility
14 license pursuant to Division 1.5 (commencing with Section 475) of the Business and
15 Professions Code, a crime or act shall be considered substantially related to the
16 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.

17 **COSTS**

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

24 **DRUGS**

25 13. Heroin is a Schedule I controlled substance as designated by Health and Safety
26 Code section 11054, subdivision (c)(11), and is a dangerous drug pursuant to Business and
27 Professions Code section 4022.

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

4 **FIRST CAUSE FOR DISCIPLINE**

5 **(August 6, 2012 Criminal Conviction for Under the Influence**
6 **of a Controlled Substance on July 19, 2012)**

7 15. Respondent has subjected his registration to discipline under sections 490 and 4301,
8 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
9 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

10 a. On or about August 6, 2012, in a criminal proceeding entitled *People of the*
11 *State of California v. Vincent D. Bell, aka Vincent Daniel Bell*, in San Diego County Superior
12 Court, case number CD242114, Respondent was convicted on his plea of guilty to violating
13 Health and Safety Code section 11550, subdivision (a), under the influence of a controlled
14 substance, to wit, methamphetamine, a misdemeanor. Pursuant to a plea agreement, the court
15 dismissed additional counts of violating Health and Safety Code section 11350, subdivision (a),
16 possession of a controlled substance, to wit, heroin; and Health and Safety Code section 11364.1,
17 subdivision (a), possession of controlled substance paraphernalia.

18 b. As a result of the conviction, on or about August 6, 2012, Respondent was
19 sentenced to serve 90 days in the custody of the sheriff, with credit for one day, to be completed
20 in a drug treatment program. Respondent was granted summary probation for five years, ordered
21 to pay fees, fines, and restitution, submit to a Fourth Amendment waiver, and comply with the
22 terms of probation.

23 c. The facts that led to the conviction are that on or about the morning of July 19,
24 2012, a patrol officer with the San Diego Police Department stopped to assist a vehicle on the
25 side of the road. The officer made contact with Respondent and his female companion, who had
26 an active arrest warrant out of Florida. Based on the warrant, the officer searched the vehicle.
27 Underneath the front passenger seat, the officer located a plastic box containing spoons with burn
28 marks, multiple empty syringes, one syringe containing a clear liquid, empty paper bindles, and

1 one paper bindle containing black tar substances that were subsequently identified as heroin.
2 Inside the pocket of a pair of sweatpants found in the vehicle, the officer located a clear glass pipe
3 containing a white residue. Respondent admitted that he had used the pipe to smoke
4 methamphetamine the night before. Inside a backpack in the back seat, the officer found another
5 glass pipe, and a hand torch. Respondent showed numerous signs of being under the influence of
6 methamphetamine: rapid speech, strong thirst, muscle rigidity, profuse sweating, and agitated
7 demeanor. During booking, Respondent provided a blood sample which subsequently tested
8 positive for amphetamine and methamphetamine.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Illegal Use of a Controlled Substance)**

11 16. Respondent has subjected his registration to discipline under section 4301,
12 subdivision (h) of the Code for unprofessional conduct in that on or around July 19, 2012,
13 Respondent was under the influence of methamphetamine, as described in paragraph 16, above,
14 conduct that was dangerous or injurious to himself, and impaired Respondent's ability to safely
15 practice as a pharmacy technician.

16 **THIRD CAUSE FOR DISCIPLINE**

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

18 17. Respondent has subjected his registration to disciplinary action under section 4301,
19 subdivision (j) of the Code for unprofessional conduct in that on or about July 19, 2012, as
20 described in paragraph 16, above, Respondent's conduct violated state laws regulating controlled
21 substances as follows: Health and Safety Code section 11377, subdivision (a) – possession of a
22 controlled substance; Health & Safety Code section 11350, subdivision (a) – under the influence
23 of a controlled substance; and Health and Safety Code section 11364.1, subdivision (a) –
24 possession of controlled substance paraphernalia.

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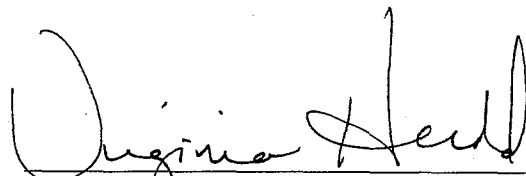
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PRAYER

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 112567, issued to Vincent Daniel Bell;
2. Ordering Vincent Daniel Bell 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: 8/14/13



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

SD2013705377