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

In the Matter of the Accusation Against:

DRAHNIER DEL ROSARIO SCHMIDT
14222 Filmore Street
Arleta, CA 91331

**Pharmacy Technician Registration No. TCH
122982**

Respondent.

Case No. 4720

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 21, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4720 against Drahnier Del Rosario Schmidt (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 29, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 122982 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4720 and will expire on September 30, 2015, unless renewed.

3. On or about November 6, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4720, 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:

5 14222 Filmore Street
6 Arleta, CA 91331.

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

10 5. Government Code section 11506 states, in pertinent part:

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
17 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
18 4720.

19 7. California Government Code section 11520 states, in pertinent part:

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

24 8. Pursuant to its authority under Government Code section 11520, the Board finds
25 Respondent is in default. The Board will take action without further hearing and, based on the
26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
27 taking official notice of all the investigatory reports, exhibits and statements contained therein on
28 file at the Board's offices regarding the allegations contained in Accusation No. 4720, finds that
the charges and allegations in Accusation No. 4720, are separately and severally, found to be true
and correct by clear and convincing evidence.

///

1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$1,525.00 as of December 20, 2013.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Drahnier Del Rosario Schmidt
6 has subjected his Pharmacy Technician Registration No. TCH 122982 to discipline.

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

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

11 a. Business & Professions Code Sections 490 and 4301(l), in conjunction with
12 California Code of Regulations, title 16, Section 1770, for Conviction of a Substantially Related
13 Crime.

14 b. Business & Professions Code Section 4301(f), for Acts Involving Dishonesty, Fraud,
15 or Deceit.

16 c. Business & Professions Code Section 4301(g), for Knowingly Making a False
17 Statement of Fact.

18 d. Business & Professions Code Section 4301(o), for Unprofessional Conduct/Violation
19 of Licensing Chapter.

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ORDER

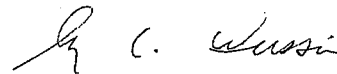
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 122982, heretofore issued to Respondent Drahner Del Rosario Schmidt, is revoked.

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 February 24, 2014.

It is so ORDERED ON January 24, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:LA2013509638

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
4 State Bar No. 130426
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 620-3005
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**

11 In the Matter of the Accusation Against:
12 **DRAHNIER DEL ROSARIO SCHMIDT**
13 14222 Filmore Street
Arleta, CA 91331
14 Pharmacy Technician Registration
No. TCH 122982
15
16 Respondent.

Case No. 4720
A C C U S A T I O N

17
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 May 29, 2012, the Board of Pharmacy issued Pharmacy Technician
23 Registration No. TCH 122982 to Drahnier Del Rosario Schmidt (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 September 30, 2015, unless renewed.

26 **JURISDICTION**

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

STATUTORY PROVISIONS

1
2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides, in pertinent part, that every license issued by the Board is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states:

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

25 7. Section 4301 states, in pertinent part:

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

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"(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.

....

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

"(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.

....

"(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable

1 federal and state laws and regulations governing pharmacy, including regulations established by
2 the board or by any other state or federal regulatory agency."

3 **REGULATORY PROVISIONS**

4 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

11 **COST RECOVERY**

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Conviction of a Substantially Related Crime)**

18 10. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and
19 490, in conjunction with California Code of Regulations, title 16, Section 1770, in that
20 Respondent was convicted of a crime substantially related to the qualifications, functions or
21 duties of a pharmacy technician, as follows:

22 a. On or about January 4, 2013, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Penal Code section 470, subdivision (d) [false
24 check/record/certificate] and one misdemeanor count of Penal Code section 484G, subdivision (a)
25 [theft by fraudulent use of forged/invalid access card] in the criminal proceeding entitled *The*
26 *People of the State of California v. Drahnier Del Rosario Schmidt* (Super Ct. Los Angeles
27 County, 2013, No. 2WA23576.) The Court placed Respondent on 24 months probation and
28 ordered him to make restitution to the victim, among other terms and conditions.

1 b. The circumstances surrounding the conviction are that, on or about May 17, 2012,
2 Respondent used credit cards belonging to the victim (his sister's co-worker), without the
3 victim's permission, to make several purchases, including but not limited to gas for a vehicle, a
4 Nintendo game console from Target.com and an Apple I-Pad from the Target store in Northridge,
5 totaling approximately \$1,804.44.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Dishonesty, Fraud, or Deceit)**

8 11. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in
9 that on or about May 17, 2012, Respondent committed acts involving dishonesty, fraud, or deceit
10 with the intent to substantially benefit himself, or substantially injure another. Complainant refers
11 to, and by reference incorporates, the allegations set forth above in Paragraph 10, subparagraph
12 (b), as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Knowingly Making a False Statement of Fact)**

15 12. Respondent is subject to disciplinary action under Section 4301, subdivision (g), on
16 the grounds of unprofessional conduct, in that Respondent knowingly made or signed a document
17 and/or documents that falsely represented the existence or nonexistence of a state of facts in order
18 to use a credit card that did not belong to him. Complainant refers to, and by reference
19 incorporates, the allegations set forth above in Paragraph 10, subparagraph (b), as though set forth
20 fully.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

23 13. Respondent is subject to disciplinary action under Section 4301, (o), in that
24 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
25 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
26 in Paragraphs 10 through 12, inclusive, as though set forth fully.

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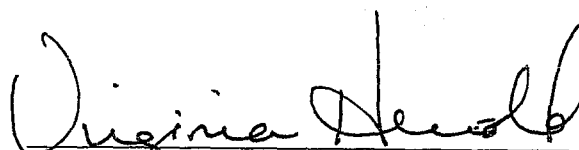
PRAYER

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 122982, issued to Drahnier Del Rosario Schmidt;
2. Ordering Drahnier Del Rosario Schmidt to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

10/21/13



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

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