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

In the Matter of the Accusation Against:
ROSANNA GUTIERREZ
1339 E. La Doney Dr.
Ontario, CA 91764

Pharmacy Technician Registration
No. TCH 100088

Respondent.

Case No. 4740
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On February 15, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4740 against Respondent Rosanna Gutierrez before the Board of Pharmacy. The Accusation is attached as Exhibit A.
2. On August 24, 2010, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 100088 to Respondent. The Pharmacy Technician Registration was active at all times relevant the Accusation's charges. It subsequently expired on April 30, 2014 and Respondent has not renewed it.
3. On March 11, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4740, Statement to Respondent, Notice of Defense, Request for Discovery,

1 and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at her
2 address of record. Her address of record was and is 1339 E. La Deney Dr., Ontario, CA 91764.

3 4. Service of the Accusation was legally effective under Government Code section
4 11505 subdivision (c) and Business & Professions Code section 124.

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

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

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
12 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4740.

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

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

18 8. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
21 taking official notice of all the investigatory reports, exhibits and statements contained therein on
22 file at the Board's offices regarding the allegations contained in Accusation No. 4740, finds that
23 the charges and allegations in Accusation No. 4740, are separately and severally, found to be true
24 and correct by clear and convincing evidence.

25 9. Taking official notice of its own internal records, pursuant to Business and
26 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
27 and Enforcement is \$1,070 as of May 6, 2014.

28 **DETERMINATION OF ISSUES**

1. Based on the foregoing findings of fact, Respondent Rosanna Gutierrez has subjected
her Pharmacy Technician Registration No. TCH 100088 to discipline.

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

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

4 (a) Business and Professions Code sections 490, 4300, and 4301 subdivision (l) in
5 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
6 unprofessional conduct, in that Respondent was convicted of a crime substantially related to the
7 qualifications, functions or duties of a pharmacy technician, because on or about January 11,
8 2013, Respondent was convicted of one misdemeanor count of violating Penal code section
9 25400, subsection (c)(6)(b) [carrying a concealed weapon] in the criminal proceeding entitled
10 *People v. Rosanna Gutierrez* (Super. Ct. San Bernardino County, 2013, No. MWV1203794.

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ORDER

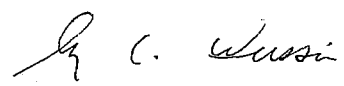
IT IS ORDERED that Pharmacy Technician Registration No. TCH 100088 issued to Respondent Rosanna Gutierrez is revoked.

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 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 September 26, 2014.

It is so ORDERED August 27, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 

STAN C. WEISSER
Board President

51518061.DOC
DOJ Matter ID:LA2013509641

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
3 GEOFF WARD
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Attorneys for Complainant
7

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. 4740

13 **ROSANNA GUTIERREZ**
14 1339 E. La Denev Drive
15 Ontario, CA 91764

ACCUSATION

16 Pharmacy Technician Registration No. TCH
17 100088

18 Respondent.

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 August 24, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration No. TCH 100088 to Rosanna Gutierrez (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on April 30, 2014, unless renewed.

27 **JURISDICTION**

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

4. Section 4300.1 grants the Board jurisdiction to discipline expired licenses.

1 dismissing the accusation, information, or indictment.”

2 **BOARD REGULATIONS**

3 7. California Code of Regulations, title 16, section 1770 provides criteria for
4 determining when a conviction is substantially related to a Board-licensed profession:

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 registrant
10 to perform the functions authorized by his license or registration in a manner
11 consistent with the public health, safety, or welfare."

12 **COST RECOVERY**

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

16 **CAUSE FOR DISCIPLINE**

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

18 9. Respondent is subject to disciplinary action under sections 490 and 4301 subdivision
19 (I) in conjunction with California Code of Regulations, title 16, section 1770 because she was
20 convicted of misdemeanor carrying of a concealed weapon, a crime substantially related to the
21 qualifications, functions or duties of a pharmacy technician.

22 10. On or about January 11, 2013, after pleading nolo contendere, Respondent was
23 convicted of one misdemeanor count of violating Penal code section 25400, subsection (c)(6)(b)
24 [carrying a concealed weapon] in the criminal proceeding entitled *People v. Rosanna Gutierrez*
25 (Super. Ct. San Bernardino County, 2013, No. MWV1203794.) The Court sentenced her to serve
26 45 days in San Bernardino County Jail and 36 months' probation.

27 11. The circumstances surrounding the conviction are that on May 29, 2012, the Ontario
28 Police Department received an anonymous tip that someone was attempting to sell an assault rifle
out of her car. The responding officer found Respondent in her car, obtained her consent to
search it, and found an Olympic Arms .223 caliber assault rifle and a loaded thirty round
magazine wrapped in a towel in the trunk along with a small amount of marijuana.

