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

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| In the Matter of the Accusation Against:<br><br>**FRANCISCO JAVIER ARMENTA**<br>**3100 East 69th Street**<br>**Long Beach, CA 90805**<br><br>**Pharmacy Technician Registration**<br>**No. TCH 104703**<br><br>Respondent. | Case No. 4744<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

## FINDINGS OF FACT

1. On July 14, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4744 against Francisco Javier Armenta (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On June 30, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 104703 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4744 and expired on January 31, 2014, while under disciplinary suspension. This lapse in licensure, however, pursuant to Business and Professions Code (Code) section 4300.1, does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about July 25, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4744, 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: 3100 East 69th Street, Long Beach, CA 90805.

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. 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.

6. 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. 4744.

7. 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.

8. 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. 4744, finds that the charges and allegations in Accusation No. 4744, are separately and severally, found to be true and correct by clear and convincing evidence.

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9. 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 $1,930.00 as of August 25, 2014.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Francisco Armenta has subjected his Pharmacy Technician Registration No. TCH 104703 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 has subjected his license to disciplinary action under sections 490 and 4301, subdivisions (k) and (l) of the Code, in that Respondent was convicted of multiple felony crimes; possession of controlled substances for sale, cocaine and hydrocodone, and sale or transportation of controlled substances, cocaine and hydrocodone, which are substantially related to the qualifications, functions, and duties of a pharmacy technician.

b. Respondent has subjected his license to disciplinary action under section 4301, subdivision (j) of the Code in that Respondent violated laws regulating controlled substances, which constitutes unprofessional conduct.

c. Respondent has subjected his license to disciplinary action under section 4301, subdivision (o) of the Code in that Respondent violated the Pharmacy Act by furnishing a dangerous drug to others in violation of Code section 4059 and illegally possessing a controlled substance in violation of Code section 4060, which constitutes unprofessional conduct.

## ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 104703, heretofore issued to Respondent Francisco Javier Armenta, 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 October 20, 2014.

It is so ORDERED September 18, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:SD2013705968

Attachment:
Exhibit A: Accusation

# Exhibit A

Accusation

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**BEFORE THE**
**BOARD OF PHARMACY**
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| In the Matter of the Accusation Against:<br><br>**FRANCISCO ARMENTA**<br>**3100 East 69th Street**<br>**Long Beach, CA 90805**<br><br>**Pharmacy Technician Registration No. TCH 104703**<br><br>Respondent. | Case No. 4744<br><br>**A C C U S A T I O N** |

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 June 30, 2010, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 104703 to Francisco Armenta (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on January 31, 2014, while under disciplinary suspension.

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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 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation 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.

5. Section 4300, subdivision (a) of the Code states:

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

6. 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

7. Section 482 of the Code states, in pertinent part:

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

". . .

"(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."

8. 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.

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9. 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 to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

10. Section 4059 of the Code states, in pertinent part, that a person may not furnish any dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Section 4060 of the Code states:

> No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7,or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.
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> Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

12. Section 4301 of the Code states:

> 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 misrepresentation or issued by mistake. 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.

. . . .

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

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

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

. . . .

13. Health and Safety Code section 11350 provides that every person who possesses a controlled substance, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison.

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## REGULATORY PROVISIONS

14. California Code of Regulations, title 16, (CCR) 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."

15. CCR section 1769, states, in pertinent part:

. . . .

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

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

(2) Total criminal record.

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

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

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

## COST RECOVERY

16. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

## DRUGS

17. Hydrocodone/acetaminophen, also known by the brand names Vicodin, Vicodin ES, Norco, Zydone, Maxidone, Lortab, Lorcet, Hydrocet, Co-Gesic, and Anexsia, is a narcotic Schedule III controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section 4022. Hydrocodone is used as a narcotic analgesic in the relief of pain.

18. Cocaine, a narcotic, is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b), and a dangerous drug pursuant to Business and Professions Code section 4022.

**FIRST CAUSE FOR DISCIPLINE**

**(May 23, 2014 Criminal Convictions for Controlled Substance Violations)**

19. Respondent is subject to disciplinary action under sections 490 and 4301, subdivisions (k) and (l), in that he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician. The circumstances are as follows:

a. On May 23, 2014, in a criminal proceeding entitled *People of the State of California v. Francisco Javier Armenta*, Orange County Superior Court case number 13 NF1887, Respondent was convicted by his guilty plea of a felony violation of Health and Safety Code section 11351, possession of a controlled substance for sale, cocaine; a felony violation of Health and Safety Code section 11352, subdivision (a), sale or transportation of a controlled substance, cocaine; a felony violation of Health and Safety Code section 11351, possession of a controlled substance for sale, hydrocodone; a felony violation of Health and Safety Code section 11352, subdivision (a), sale or transportation of a controlled substance, hydrocodone. Respondent also received a special punishment allegation pursuant to Health and Safety Code section 11350, subdivision (a).

b. The facts that led to the conviction are that Respondent was double parked on a street in Fullerton, California when he was approached by two detectives from the Fullerton Police Department. One of the detectives observed Respondent attempting to hide a ziplock baggie containing a large number of pills. When asked, respondent admitted he did not have a

prescription for the pills. During a consensual search of Respondent's vehicle, the detectives also discovered four bindles containing a white powder. Respondent indicated the powder was cocaine. The pills were tested and found to be 90 tablets of hydrocodone. The powder was tested and found to be 12 grams of cocaine.

c. As a result of his conviction, Respondent was sentenced to three years of formal probation, serve 120 days in county jail, ordered to pay fees and fines, and register as a narcotics offender.

**SECOND CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violating Laws Regulating Controlled Substances)**

20. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subdivision (j) of the Code in that he violated California Health and Safety Code section 11350, subdivision (a), as set forth in paragraph 19, above, incorporated herein by reference.

**THIRD CAUSE FOR DISCIPLINE**

**(Unprofessional Conduct - Violation of Chapter)**

21. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subdivision (o) of the Code in that Respondent violated the Pharmacy Act by furnishing a dangerous drug to others in violation of Code section 4059 and illegally possessing a controlled substance in violation of Code section 4060, as set forth in paragraph 19, above, incorporated herein by reference.

**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 104703, issued to Francisco Armenta;

2. Ordering Francisco Javier Armenta 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;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 7/14/14

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

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