

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
**FRANCISCO RUBIO**  
**508 South C Street**  
**Imperial, CA 91951**  
**Pharmacy Technician Registration**  
**No. TCH 90579**  
  
Respondent.

Case No. 4764  
**DEFAULT DECISION AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about September 6, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4764 against Francisco Rubio (Respondent) before the Board of Pharmacy. (The Accusation is attached as Exhibit A.)
2. On or about April 27, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 90579 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4764 and will expire on July 31, 2014, unless renewed.
3. On or about October 18, 2013, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4764, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and

1 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
2 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
3 record was and is:

4 508 South C Street  
5 Imperial, CA 91951

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

9 5. On or about October 1, 2013, the Domestic Return Receipt for the aforementioned  
10 documents served by Certified Mail was signed acknowledging delivery of the Accusation.

11 6. On or about October 3, 2013, Respondent telephoned a Supervising Deputy Attorney  
12 General who reminded Respondent to file the Notice of Defense to avoid a default.

13 7. Government Code section 11506 states, in pertinent part:

14 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
15 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
16 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.

17 8. Respondent failed to file a Notice of Defense within 15 days after service upon him  
18 of the Accusation, and therefore waived his right to a hearing-on the merits of Accusation No.  
19 4764.

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

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

24 10. 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. 4764, finds that

1 the charges and allegations in Accusation No. 4764, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 11. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$685.00 as of October 25, 2013.

#### 6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Francisco Rubio has subjected  
8 his Pharmacy Technician Registration No. TCH 90579 to discipline.

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

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

13 a. Respondent has subjected his registration to discipline under sections 490 and  
14 4301, subdivision (l) of the Code in that on or about December 6, 2010, in a criminal proceeding  
15 entitled *People of the State of California v. Frank Rubio*, in Imperial County Superior Court, case  
16 number BCM23729, Respondent was convicted on his plea of guilty to violating Penal Code  
17 section 243, subdivision (e)(1), battery on a spouse, a misdemeanor, a crime that is substantially  
18 related to the qualifications, duties, and functions of a pharmacy technician.

19 b. Respondent has subjected his registration to discipline under sections 490 and  
20 4301, subdivision (l) of the Code in that on or about November 28, 2012, in a criminal proceeding  
21 entitled *People of the State of California v. Francisco Rubio*, in Imperial County Superior Court,  
22 case number JCF29804, Respondent was convicted on his plea of no contest violating Penal Code  
23 section 647, disorderly conduct, a misdemeanor, a crime that is substantially related to the  
24 qualifications, duties, and functions of a pharmacy technician.

25 c. Respondent has subjected his registration to discipline under section 4301,  
26 subdivision (h) of the Code in that he used controlled substances, and was under the influence of  
27 controlled substances without a prescription on April 27, 2012.

28 ///

1           d. Respondent has subjected his registration to discipline under section 4301,  
2 subdivision (f) of the Code for unprofessional conduct in that Respondent obtained controlled  
3 substances from his employer/pharmacy using fraud, deceit, and dishonesty.

4           e. Respondent is subject to disciplinary action under section 4301, subdivision (j)  
5 of the Code for unprofessional conduct in that on or about April 27, 2012, Respondent knowingly  
6 violated Business and Professions Code sections 4022, 4059, and 4060.

7 ///

8 ///

9 ///

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

ORDER

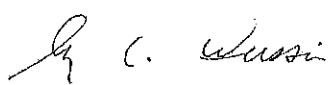
1  
2 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 90579, heretofore  
3 issued to Respondent Francisco Rubio, is revoked.

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

8 This Decision shall become effective on January 17, 2014.

9 It is so ORDERED ON December 18, 2013.

10 BOARD OF PHARMACY  
11 DEPARTMENT OF CONSUMER AFFAIRS  
12 STATE OF CALIFORNIA

13   
14 By \_\_\_\_\_  
15 STAN C. WEISSER  
16 Board President

17  
18  
19  
20  
21  
22  
23  
24  
25 DOJ Matter ID:SD2013705497  
26 Attachment:  
27 Exhibit A: Accusation  
28

# Exhibit A

## Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
4 Senior Legal Analyst  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2141  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**  
11

12 In the Matter of the Accusation Against:

Case No. 4764

13 **FRANCISCO RUBIO**  
14 **508 South C Street**  
**Imperial, CA 91951**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 90579**

Respondent.

17  
18  
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 27, 2009, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 90579 to Francisco Rubio, who is also known as Frank Rubio, and  
25 Francisco Garcia Rubio (Respondent). The Pharmacy Technician Registration was in full force  
26 and effect at all times relevant to the charges brought herein and will expire on July 31, 2014,  
27 unless renewed.

28 ///

## 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 "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,' and  
4 'registration.'"

5 9. Section 4022 of the Code states

6 "Dangerous drug" or "dangerous device" means any drug or device unsafe for  
7 self-use in humans or animals, and includes the following:

8 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing  
9 without prescription," "Rx only," or words of similar import.

10 (b) Any device that bears the statement: "Caution: federal law restricts this  
11 device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar  
12 import, the blank to be filled in with the designation of the practitioner licensed to use  
13 or order use of the device.

14 (c) Any other drug or device that by federal or state law can be lawfully  
15 dispensed only on prescription or furnished pursuant to Section 4006.

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

21 11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any  
22 controlled substance, except that furnished to a person upon the prescription of a physician,  
23 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

24 12. Section 4301 of the Code states:

25 The board shall take action against any holder of a license who is guilty of  
26 unprofessional conduct or whose license has been procured by fraud or  
27 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is  
28 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.

(h) The administering to oneself, of any controlled substance, or the use of any  
dangerous drug or of alcoholic beverages to the extent or in a manner as to be

1 dangerous or injurious to oneself, to a person holding a license under this chapter, or  
2 to any other person or to the public, or to the extent that the use impairs the ability of  
3 the person to conduct with safety to the public the practice authorized by the license.

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

6  
7 (l) The conviction of a crime substantially related to the qualifications,  
8 functions, and duties of a licensee under this chapter. The record of conviction of a  
9 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United  
10 States Code regulating controlled substances or of a violation of the statutes of this  
11 state regulating controlled substances or dangerous drugs shall be conclusive  
12 evidence of unprofessional conduct. In all other cases, the record of conviction shall  
13 be conclusive evidence only of the fact that the conviction occurred. The board may  
14 inquire into the circumstances surrounding the commission of the crime, in order to  
15 fix the degree of discipline or, in the case of a conviction not involving controlled  
16 substances or dangerous drugs, to determine if the conviction is of an offense  
17 substantially related to the qualifications, functions, and duties of a licensee under this  
18 chapter. A plea or verdict of guilty or a conviction following a plea of nolo  
19 contendere is deemed to be a conviction within the meaning of this provision. The  
20 board may take action when the time for appeal has elapsed, or the judgment of  
21 conviction has been affirmed on appeal or when an order granting probation is made  
22 suspending the imposition of sentence, irrespective of a subsequent order under  
23 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of  
24 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or  
25 dismissing the accusation, information, or indictment.

17  
18 == **REGULATORY PROVISIONS** ==

19 13. California Code of Regulations, title 16, section 1769, states:

20  
21 (b) When considering the suspension or revocation of a facility or a personal  
22 License on the ground that the licensee or the registrant has been convicted of a  
23 crime, the board, in evaluating the rehabilitation of such person and his present  
24 eligibility for a license will consider the following criteria:

- 24 (1) Nature and severity of the act(s) or offense(s).
- 25 (2) Total criminal record.
- 26 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 27 (4) Whether the licensee has complied with all terms of parole, probation,  
28 restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

1 14. California Code of Regulations, title 16, section 1770, states:

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

#### 6 COSTS

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

#### 13 DRUGS

14 16. Alprazolam, sold commercially as Xanax, is a Schedule IV controlled substance  
15 under California Health and Safety Code section 11057, subdivision (d)(1), and is classified as a  
16 dangerous drug pursuant to Business and Professions Code section 4022.

17 17. Hydrocodone bitartate/acetaminophen, sold commercially as Vicodin, Norco, etc., is  
18 a Schedule III controlled substance as designated by Health and Safety Code section 11056,  
19 subdivision (e)(4), and is a dangerous drug pursuant to Business and Professions Code section  
20 4022.

21 18. Hydrocodone is a Schedule II controlled substance as designated by Health and  
22 Safety Code section 11055, subdivision (b)(1)(I), and is a dangerous drug pursuant to Business  
23 and Professions Code section 4022.

24 19. Marijuana is a Schedule I controlled substance as designated by Health and Safety  
25 Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business &  
26 Professions Code section 4022.

27 ///

28 ///

1 20. 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 21. Promethazine is a Schedule V controlled substance as designated by Health and  
5 Safety Code section 11058, subdivision (c)(1), and is a dangerous drug pursuant to Business and  
6 Professions Code section 4022.

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(December 6, 2010 Criminal Conviction for Domestic Battery on November 27, 2010)**

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

12 a. On or about December 6, 2010, in a criminal proceeding entitled *People of the*  
13 *State of California v. Frank Rubio*, in Imperial County Superior Court, case number BCM23729,  
14 Respondent was convicted on his plea of guilty to violating Penal Code section 243, subdivision  
15 (e)(1), battery on a spouse, a misdemeanor.

16 b. As a result of the conviction, on or about December 6, 2010, Respondent was  
17 sentenced to nine days in jail, with credit for nine days, and granted summary probation for three  
18 years. Respondent was further ordered to complete a 52-week Certified Anger Management  
19 program, pays fees and fines, and to comply with probation terms. A protective order was issued  
20 for the victim.

21 c. The facts that led to the conviction are that on or about the afternoon of  
22 November 27, 2010, the Brawley Police Department responded to a domestic violence call at  
23 Respondent's residence. Respondent had already left the residence by the time officers arrived.  
24 The victim told officers that during an argument with Respondent, he had pushed her to the floor  
25 causing injury to her elbow and back. The incident took place in front of their three-year-old son.  
26 Respondent was arrested a few hours later at his mother's house. During questioning,  
27 Respondent told the officer he "barely" pushed the victim. The victim went to the police station  
28 where bruises to her thigh and elbow were photographed.

SECOND CAUSE FOR DISCIPLINE

(November 28, 2012 Criminal Conviction for Disorderly Conduct on April 27, 2012)

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

a. On or about November 28, 2012, in a criminal proceeding entitled *People of the State of California v. Francisco Rubio*, in Imperial County Superior Court, case number JCF29804, Respondent was convicted on his plea of no contest violating Penal Code section 647, disorderly conduct, a misdemeanor. The court granted the defense's motion to suppress evidence, under Penal Code section 1538.5, and dismissed the original counts of possession of a controlled substance (Health & Saf. Code, § 11377(a)), under the influence of a controlled substance (Health & Saf. Code, § 11550(a)), and possession of an opium pipe (Health & Saf. Code, § 11364.1(a)).

b. As a result of the conviction, on or about November 28, 2012, Respondent was sentenced to 38 days in jail, with credit for 38 days, and payment of fees.

c. The facts that led to the conviction are that on or about the evening of April 27, 2012, a patrol officer with the Imperial Police Department observed Respondent sitting in the driver's seat of a vehicle parked in front of a residence with past drug-related arrests and police contacts. There was another male in the passenger seat. The officer made contact with Respondent who told the officer he was dropping off his friend at the residence. The officer detected a strong odor of marijuana emitting from the interior of the vehicle. He also observed that Respondent appeared nervous and shifted from side to side in his seat, his speech was rapid, slurred, and choppy, his eyes were red, watery, glassy, and appeared enlarged, his mouth was dry and he constantly licked his lips. Under questioning, Respondent admitted that he had smoked marijuana earlier. The officer conducted field sobriety tests on Respondent. Respondent's eyelids exhibited fluttering, his pupils were dilated, and his pulse was 120 bpm. Respondent admitted to the officer that he had last used methamphetamine the day before. Respondent's vehicle was searched. A glass pipe used to smoke methamphetamine was found between the center console and the passenger seat, and a baggie containing marijuana was on the right rear

1 passenger floorboard in plain view. Inside the center console, officers found two tablets of  
2 Alprazolam, one tablet of acetaminophen with hydrocodone, and a plastic container with  
3 marijuana residue. Additionally, the officers found a prescription bottle containing 15  
4 hydrocodone tablets prescribed to a female patient; and a medicine bottle containing  
5 promethazine, prescribed to a second female patient. Both prescriptions were filled at the  
6 pharmacy where Respondent was employed. In the trunk of the vehicle, the officer found another  
7 tablet of acetaminophen with hydrocodone in the pocket of a pair of jeans. The officer contacted  
8 one of the prescribed patients; she told the officer that she did not know Respondent and did not  
9 give him permission to possess the prescription medication. The promethazine was prescribed to  
10 her, but she never filled the prescription because her insurance did not cover the cost and she  
11 could not afford to pay for it out of pocket. The officer contacted the pharmacy's prescription  
12 manager who came to the police station to identify the substances. She stated that Respondent  
13 delivered prescriptions for the pharmacy, and there was no reason for him to possess the  
14 controlled substances. The manager stated that the bottle of promethazine was specifically  
15 marked for destruction after the patient did not purchase the prescription. The only way  
16 Respondent would be in possession of the medication was if he stole it from the pharmacy. The  
17 manager stated she would report the theft to the Drug Enforcement Administration. Respondent  
18 admitted during questioning that he was in possession of prescriptions from the pharmacy that  
19 he forgot to deliver. During booking, Respondent provided a urine sample which subsequently  
20 tested positive for benzodiazepines, marijuana, methamphetamine, and opiates. Respondent did  
21 not have a valid prescription for these substances at the time of his arrest.

### 22 THIRD CAUSE FOR DISCIPLINE

#### 23 (Illegal Use of Controlled Substances)

24 24. Respondent has subjected his registration to discipline under section 4301,  
25 subdivision (h) of the Code in that he used controlled substances, and was under the influence of  
26 controlled substances without a prescription on April 27, 2012, as described in paragraph 23,  
27 above. Such conduct was dangerous or injurious to himself, and it impaired Respondent's ability  
28 to safely conduct practice as a pharmacy technician.

