

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:

**MARCUS A. DIGIOVANNA**  
43754 Sentry Lane  
Lancaster, CA 93536

Pharmacy Technician Registration No. TCH  
48991

Respondent.

Case No. 4782

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about November 13, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4782 against Marcus A. Digiovanna ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 16, 2003, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 48991 to Respondent. The Pharmacy Technician Registration

1 was in full force and effect at all times relevant to the charges brought in Accusation No. 4782  
2 and will expire on March 31, 2015, unless renewed.

3 3. On or about November 22, 2013, Respondent was served by Certified and First Class  
4 Mail with copies of the Accusation No. 4782, Statement to Respondent, Notice of Defense,  
5 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,  
6 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions  
7 Code section 4100, is required to be reported and maintained with the Board. Respondent's  
8 address of record was and is: 43754 Sentry Lane, Lancaster, CA 93536.

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. The aforementioned documents in Paragraph 3 that were served both by Certified  
13 Mail and First Class Mail were not returned by the U.S. Postal Service.

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 4782.

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. 4782, finds that  
2 the charges and allegations in Accusation No. 4782, 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 \$1,722.50 as of January 3, 2014.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Marcus A. Digiovanna has  
9 subjected his Pharmacy Technician Registration No. TCH 48991 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 evidence contained in the Default Decision Evidence Packet in this case:

14 (a) Business and Professions Code sections 4060 and 4301, subdivision (o), in  
15 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of  
16 unprofessional conduct in that on or about December 15, 2011 and March 9, 2012, Respondent  
17 violated the Pharmacy Law by unlawfully possessing a controlled substance, to wit, cocaine.

18 (b) Business and Professions Code section 4301, subdivision (h) on the grounds of  
19 unprofessional conduct in that on or about December 14, 2011, Respondent used a controlled  
20 substance, to wit, cocaine, in a manner dangerous or injurious to himself or the public.

21 (c) Business and Professions Code section 4301, subdivision (j) and Health and  
22 Safety Code sections 11350, subdivision (a) and 11170 on the grounds of unprofessional conduct  
23 in that on or about December 14-15, 2011 and March 9, 2012, Respondent violated California  
24 rules regulating controlled substances when he unlawfully possessed and self-furnished cocaine  
25 without a prescription.

26 (d) Business and Professions Code section 4301, subdivision (f) on the grounds of  
27 unprofessional conduct in that Respondent committed a dishonest act when on or about March 19,  
28 2013, on his Request for Renewal of California Pharmacy Technician Registration, Respondent

1 answered "no" to the question: "Since you last renewed your license, have you had any license  
2 disciplined by a government agency or any other disciplinary body; or have you been convicted  
3 of any crime in any state, the USA and its territories, military court or a foreign country?"  
4 Pursuant to Penal Code section 1210.1, subdivision (e)(3), Respondent was required to disclose  
5 that on April 3, 2012 and June 20, 2012 he had pleaded guilty to violating Health and Safety  
6 Code section 11530, subdivision (a).

7 **ORDER**

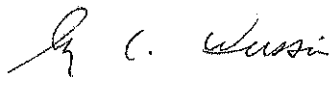
8 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 48991, heretofore  
9 issued to Respondent Marcus A. Digiovanna, is revoked.

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

14 This Decision shall become effective on March 10, 2014.

15 It is so ORDERED ON February 7, 2014.

16 BOARD OF PHARMACY  
17 DEPARTMENT OF CONSUMER AFFAIRS  
18 STATE OF CALIFORNIA

19   
20 By \_\_\_\_\_  
21 STAN C. WEISSER  
22 Board President

22 51428721.DOC  
23 DOJ Matter ID:LA2013510071

24 Attachment:  
25 Exhibit A: Accusation  
26  
27  
28

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 SYDNEY M. MEHRINGER  
Deputy Attorney General  
4 State Bar No. 245282  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2537  
6 Facsimile: (213) 897-2804  
E-mail: Sydney.Mehring@doj.ca.gov  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4782

12 **MARCUS A. DIGIOVANNA**  
13 **43754 Sentry Lane**  
**Lancaster, CA 93536**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **48991**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about May 16, 2003, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 48991 to Marcus A. Digiovanna ("Respondent"). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on March 31, 2015, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy ("Board"), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.



1 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
2 with the name and address of the supplier or producer.

3 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
4 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
5 devices."

6 7. Section 4300 the Code states, in pertinent part:

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

8 "(b) The board shall discipline the holder of any license issued by the board, whose default  
9 has been entered or whose case has been heard by the board and found guilty, by any of the  
10 following methods:

11 "(1) Suspending judgment.

12 "(2) Placing him or her upon probation.

13 "(3) Suspending his or her right to practice for a period not exceeding one year.

14 "(4) Revoking his or her license.

15 "(5) Taking any other action in relation to disciplining him or her as the board in its  
16 discretion may deem proper.

17 8. Section 4301 of the Code states, in pertinent part:

18 "The board shall take action against any holder of a license who is guilty of unprofessional  
19 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

20 Unprofessional conduct shall include, but is not limited to, any of the following:

21 . . . .

22 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
23 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
24 whether the act is a felony or misdemeanor or not.

25 . . . .

26 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous  
27 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to  
28 oneself, to a person holding a license under this chapter, or to any other person or to the public, or

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 . . . .

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

6 9. Health and Safety Code section 11170 states, "[n]o person shall prescribe, administer,  
7 or furnish a controlled substance for himself."

8 10. Health and Safety Code section 11350, subdivision (a) states:

9 "(a) Except as otherwise provided in this division, every person who possesses (1) any  
10 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
12 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
14 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
15 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of  
16 Section 1170 of the Penal Code."

17 **REGULATORY PROVISIONS**

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

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

25 **CONTROLLED SUBSTANCES**

26 12. Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code  
27 section 11054(f)(1) and a dangerous drug pursuant to Business and Professions Code section  
28 4022.







1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Dishonest Act)**

3 21. Respondent is subject to disciplinary action under Code section 4301, subdivision (f)  
4 on the grounds of unprofessional conduct in that Respondent committed a dishonest act. The  
5 circumstances are as follows:

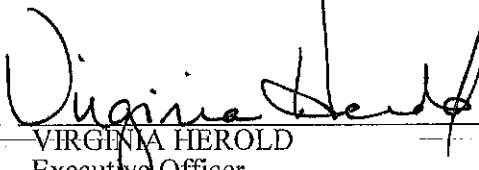
6 22. On or about April 3, 2013, the Board received Respondent's Request for Renewal of  
7 California Pharmacy Technician Registration dated March 19, 2013. In response to the question  
8 "Since you last renewed your license, have you had any license disciplined by a government  
9 agency or any other disciplinary body; or have you been convicted of any crime in any state, the  
10 USA and its territories, military court or a foreign country?" Respondent answered "No."  
11 Respondent's answer was false because pursuant to Penal Code section 1210.1, subdivision (e)(3),  
12 he was required to disclose that on April 3, 2012 and June 20, 2012 he had pleaded guilty to  
13 violating Health and Safety Code section 11530, subdivision (a).

14 **PRAAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Pharmacy issue a decision:

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 48991,  
18 issued to Marcus A. Digiovanna;
- 19 2. Ordering Marcus A. Digiovanna to pay the Board of Pharmacy the reasonable costs of  
20 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
21 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23  
24 DATED: 11/13/13

  
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant

LA2013510071  
51383271.doc