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| 9 | DEPARTMENT OF | CONSUMER AFFAIRS CALIFORNIA |
| 10 | | |
| 11 | In the Matter of the Accusation Against: | Case No. 4811 |
| 12 | CRYSTAL S. VERGARA | DEFAULT DECISION AND ORDER |
| 13 | 1810 Main Street Ramona, CA 92065 | [Gov. Code, §11520] |
| 14 | Pharmacy Technician Registration No. TCH 108318 | |
| 15 | Respondent | |
| 16 | | |
| 17 | FINDING | GS OF FACT |
| 18 | 1. On or about October 21, 2013, Cor | nplainant Virginia Herold, in her official capacity |
| 19 | as the Executive Officer of the Board of Pharm | acy, Department of Consumer Affairs, filed |
| 20 | Accusation No. 4811 against Crystal S. Vergar | a (Respondent) before the Board of Pharmacy. (A |
| 21 | copy of the Accusation is attached as Exhibit A | A.) |
| 22 | 2. On or about November 12, 2010, the second | he Board of Pharmacy (Board) issued Pharmacy |
| 23 | Technician Registration No. TCH 108318 to R | espondent. The Pharmacy Technician Registration |
| 24 | was in full force and effect at all times relevant | to the charges brought in Accusation No. 4811 |
| 25 | and will expire on July 31, 2014, unless renewe | ed. |
| 26 | 3. On or about November 1, 2013, Re | spondent was served by Certified and First Class |
| 27 | Mail copies of the Accusation No. 4811, Stater | nent to Respondent, Notice of Defense, and |
| 28 | | s 11507.5, 11507.6, and 11507.7) at Respondent's |
| | | 1 |
| | | DEFAULT DECISION AND ORDER |

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| 1 | address of record which, pursuant to Business and Professions Code section 4100 and California |
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| 2 | Code of Regulations, title 16, section 1704, is required to be reported and maintained with the |
| 3 | Board. Respondent's address of record was and is: |
| 4 | 1810 Main Street |
| 5 | Ramona, CA 92065 |
| 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 November 4, 2013, A Domestic Return Receipt was received signed by |
| 10 | "Tonya Cobos Rosa" on November 2, 2013, demonstrating that the aforementioned documents |
| 11 | served by Certified Mail were received at Respondent's address of record. |
| 12 | 6. Government Code section 11506 states, in pertinent part: |
| 13 | (c) The respondent shall be entitled to a hearing on the merits if the respondent |
| 14 | 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 |
| 15 | constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing. |
| 16 | 7. Respondent failed to file a Notice of Defense within 15 days after service upon her of |
| 17 | the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4811. |
| 18 | 8. California Government Code section 11520 states, in pertinent part: |
| 19 | (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 |
| 20 | or upon other evidence and affidavits may be used as evidence without any notice to |
| 21 | respondent. |
| 22 | 9. Pursuant to its authority under Government Code section 11520, the Board finds |
| 23 | Respondent is in default. The Board will take action without further hearing and, based on the |
| 24 | relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as |
| 25 | taking official notice of all the investigatory reports, exhibits and statements contained therein on |
| 26 | file at the Board's offices regarding the allegations contained in Accusation No. 4811, finds that |
| 27 | the charges and allegations in Accusation No. 4811, are separately and severally, found to be true |
| 28 | and correct by clear and convincing evidence. |
| | |

DEFAULT DECISION AND ORDER

| 1 | 10. Taking official notice of its own internal records, pursuant to Business and | |
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| 2 | Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation | |
| 3 | and Enforcement is \$480.00 as of December 3, 2013. | |
| 4 | DETERMINATION OF ISSUES | |
| 5 | 1. Based on the foregoing findings of fact, Respondent Crystal S. Vergara has subjected | |
| 6 | her Pharmacy Technician Registration No. TCH 108318 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 Default Decision Investigatory Evidence Packet in this case. | |
| 11 | a. Respondent has subjected her registration to discipline under section 4301, | |
| 12 | subdivision (h) of the Code in that on or about February 11, 2013, she used methamphetamine to | |
| 13 | the extent or in a manner to be dangerous to herself and others. | |
| 14 | b. Respondent has subjected her registration to discipline under section 4301, | |
| 15 | subdivision (h) of the Code in that on or about March 5, 2013, she used methamphetamine to the | |
| 16 | extent or in a manner to be dangerous to herself and others. | |
| 17 | c. Respondent has subjected her registration to discipline under section 4301, | |
| 18 | subdivision (j) of the Code in that she violated California statutes regulating controlled substances | |
| 19 | and dangerous devices by violating Business and Professions Code sections 4022, 4059, and | |
| 20 | 4060, and Health and Safety Code sections 11377, subdivision (a), and 11550, subdivision (a). | |
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| 1 | <u>ORDER</u> |
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| 2 | IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 108318, heretofore |
| 3 | issued to Respondent Crystal S. Vergara, 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 February 18, 2014. |
| 9 | It is so ORDERED ON January 17, 2014. |
| 10 | BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS |
| 11 | STATE OF CALIFORNIA |
| 12 | |
| 13 | By |
| 14 | By <u>STAN C. WEISSER</u> |
| 15 | Board President |
| 16 | |
| 17 | |
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| 20 | |
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| 23 | |
| 24 | DOJ Matter ID: SD2013705529 |
| 25 | Attachment: Exhibit A: Accusation |
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| | 4 DEFAULT DECISION AND ORDER |

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Exhibit A

Accusation

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| 1 2 3 4 5 6 7 8 9 10 11 | BOARÐ OF DEPARTMENT OF (| RE THE PHARMACY CONSUMER AFFAIRS CALIFORNIA |
| 11 | In the Matter of the Accusation Against: | Case No. 4811 |
| 12 | CRYSTAL S. VERGARA | ACCUSATION |
| 13 | 1810 Main Street Ramona, CA 92065 | |
| 15 | Pharmacy Technician Registration | |
| 16 | No. TCH 108318 | |
| 17 | Respondent. | , · |
| 18 | | |
| 19 | Complainant alleges: | |
| 20 | PAR | TIES |
| 21 | 1. Virginia Herold (Complainant) bring | ss this Accusation solely in her official capacity |
| 22 | as the Executive Officer of the Board of Pharma | cy, Department of Consumer Affairs. |
| 23 | 2. On or about November 12, 2010, the | e Board of Pharmacy issued Pharmacy Techniciar |
| 24 | Registration Number TCH 108318 to Crystal S. | Vergara (Respondent). Respondent is also |
| 25 | known as Crystal Soledad Vergara. The Pharma | cy Technician Registration was in full force and |
| 26 | effect at all times relevant to the charges brough | t herein and will expire on July 31, 2014, unless |
| 27 | renewed. | |
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| 1 | JURISDICTION |
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| 2 | 3. This Accusation is brought before the Board of Pharmacy (Board), Department of |
| 3 | Consumer Affairs, under the authority of the following laws. All section references are to the |
| 4 | Business and Professions Code (Code) unless otherwise indicated. |
| 5 | 4. Section 4300, subdivision (a) of the Code states "Every license issued may be |
| 6 | suspended or revoked." |
| 7 | 5. Section 4300.1 of the Code states: |
| 8 | The expiration, cancellation, forfeiture, or suspension of a board-issued license |
| 9 | 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 |
| 10 | 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 |
| 11 | a decision suspending or revoking the license. |
| 12 | STATUTORY PROVISIONS |
| 13 | 6. Section 492 of the Code states: |
| 14 | Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and |
| 15 16 | drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any |
| 17 | agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, |
| 18 | notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest. |
| 19 | This section shall not be construed to apply to any drug diversion program |
| 20 | operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division. |
| 21 | 7. Section 4022 of the Code states |
| 22 | "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following: |
| 23 | |
| 24 | (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import. |
| 25 | (b) Any device that bears the statement: "Caution: federal law restricts this device to spla by or on the order of a |
| 26 | device to sale by or on the order of a," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device. |
| 27 28 | (c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006. |
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| 1 | 8. Section 4059 of the Code states, in pertinent part, that a person may not furnish any |
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| 2 | dangerous drug except upon the prescription of a physician, dentist, podiatrist, optometrist, |
| 3 | veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any |
| 4 | dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, |
| 5 | veterinarian, or naturopathic doctor pursuant to Section 3640.7. |
| 6 | 9. Section 4060 of the Code states, in pertinent part, that no person shall possess any |
| 7 | controlled substance, except that furnished to a person upon the prescription of a physician, |
| 8 | dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor. |
| 9 | 10. Section 4301 of the Code states: |
| 10 | The board shall take action against any holder of a license who is guilty of |
| 11 | unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is |
| 12 | not limited to, any of the following: |
| .3 | •••• |
| 4 | (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 |
| 15 | dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of |
| 6 | the person to conduct with safety to the public the practice authorized by the license. |
| 7 | |
| 8 | (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. |
| 9 | |
| 0 | REGULATORY PROVISIONS |
| 1 | 11. California Code of Regulations, title 16, section 1769, states: |
| 2 | |
| 3 | (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, |
| 24 | the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria: |
| .6 | (1) Nature and severity of the act(s) or offense(s). |
| 7 | (2) Total criminal record. |
| 8 | (3) The time that has elapsed since commission of the act(s) or offense(s). |
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1 (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee, 2 (5) Evidence, if any, of rehabilitation submitted by the licensee. 3 California Code of Regulations, title 16, section 1770, states: 12. 4 5 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 6 qualifications, functions or duties of a licensee or registrant if to a substantial degree 7 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 8 public health, safety, or welfare. 9 COSTS 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 10 administrative law judge to direct a licentiate found to have committed a violation or violations of 11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being 13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be 14 15 included in a stipulated settlement. DRUG 16 17 14. Methamphetamine is a Schedule II controlled substance as designated by Health 18 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business 19 and Professions Code section 4022. FIRST CAUSE FOR DISCIPLINE 20(Dangerous Use of a Controlled Substance on February 11, 2013) 21 15. Respondent has subjected her registration to discipline under section 4301, 22 subdivision (h) of the Code in that she used methamphetamine to the extent or in a manner to be 23 dangerous to herself and others on February 11, 2013. The circumstances are as follows: 24 a. On or about the afternoon of the evening of February 11, 2013, a patrol deputy 25 with the San Diego County Sheriff's Department conducted a traffic stop on a vehicle in which 26 Respondent was a passenger. All four persons in the vehicle consented to a search of the vehicle, 27 themselves, and their belongings. In the backseat where Respondent had been sitting, the deputy 28 4

located a purse which Respondent identified as hers. Inside the purse the deputy found a 1 hypodermic needle, and three bindles of what subsequently tested positive for 0.9 grams of 2 methamphetamine. He also located a single tablet of quetiapine, an antipsychotic medication, for 3 which Respondent had no prescription. Inside a knit glove was a small glass smoking pipe with 4 black and white residue consistent with the type commonly used to smoke methamphetamine. 5 Respondent was arrested. The deputy conducted a drug evaluation of Respondent; she exhibited 6 rapid eyelid fluttering, she was fidgeting, her tongue was coated with a thin white film, her pupils 7 were dilated, and her pulse was elevated. Respondent provided a urine sample for testing. 8

9 b. Following a failure to appear at court, on or about March 12, 2013, in a criminal proceeding entitled People of the State of California v. Grystal Soledad Vergara, in San 10 Diego County Superior Court, case number C327658, Respondent pled guilty to Count 1 of the 11 complaint, a violation of Health and Safety Code section 11377, subdivision (a), possession of a 12 controlled substance, to wit, methamphetamine, a felony reduced to a misdemeanor pursuant to 13 Penal Code section 17b, subdivision (4). Pursuant to a plea agreement, the court dismissed 14 additional counts of violating Health and Safety Code section 11550, subdivision (a), under the 15 influence of methamphetamine, and Vehicle Code section 23152, subdivision (a), driving under 16 the influence, misdemeanors. 17

c. As a result of the plea, on or about March 12, 2013, the court deferred entry of
judgment for 18 months and Respondent was ordered to complete a drug diversion program. On
or about August 6, 2013, a bench warrant was issued for Respondent's arrest.

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SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of a Controlled Substance on March 5, 2013)

16. Respondent has subjected her registration to discipline under section 4301,
subdivision (h) of the Code in that she used methamphetamine to the extent or in a manner to be
dangerous to herself and others on March 5, 2013. The circumstances are as follows:

a. At approximately 3:00 in the morning, on or about March 5, 2013, the same
San Diego County Sheriff's Department deputy observed Respondent walking down the street.
Due to his prior contacts with Respondent, and knowing she had an active warrant for her arrest,

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| 1 | the deputy conducted a pedestrian stop. Respondent admitted that she was aware she had a bench |
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| 2 | warrant for failing to appear at court. While speaking to Respondent, the deputy observed that |
| 3 | she was speaking rapidly and appeared nervous. When asked the last time she used |
| 4 | methamphetamine, Respondent replied "Probably yesterday." While handcuffing Respondent, |
| 5 | the deputy observed that she exhibited muscle rigidity consistent with being under the influence |
| 6 | of a controlled substance. During a drug evaluation, Respondent exhibited the following |
| 7 | symptoms: fluttering eyelids, a thin coating of white and brown film on her tongue, her mouth |
| 8 | appeared dry and foamy, her pupils were dilated, and her pulse was elevated. Respondent was |
| 9 | charged with violation of Health and Safety Code section 11550, subdivision (a), under the |
| 10 | influence of a controlled substance, to wit, methamphetamine. |
| 11 | b. As a result of the arrest, on or about March 12, 2013, in a criminal proceeding |
| 12 | entitled People of the State of California v. Crystal Soledad Vergara, in San Diego County |
| 13 | Superior Court, case number C328197, the court dismissed the charge of violating Health and |
| 14 | Safety Code section 11550, subdivision (a) pursuant to the plea agreement reached in case |
| 15 | number C327658, described in paragraph 15, above. |
| 16 | THIRD CAUSE FOR DISCIPLINE |
| 17 | (Violation of Statutes Regulating Controlled Substances) |
| 18 | 17. Respondent has subjected her registration to discipline under section 4301, |
| 19 | subdivision (j) of the Code in that she violated California statutes regulating controlled substances |
| 20 | and dangerous devices when she possessed methamphetamine and a hypodermic syringe, and was |
| 21 | under the influence of methamphetamine on January 21, 2012, in violation of Business and |
| 22 | Professions Code sections 4022, 4059, and 4060, and Health and Safety Code sections 11377, |
| 23 | subdivision (a), and 11550, subdivision (a). |
| 24 | PRAYER |
| 25 | WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, |
| 26 | and that following the hearing, the Board of Pharmacy issue a decision: |
| 27 | 1. Revoking or suspending Pharmacy Technician Registration Number TCH 108318, |
| 28 | issued to Crystal S. Vergara; |
| | 6 |

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Ordering Crystal S. Vergara to pay the Board of Pharmacy the reasonable costs of the 2. investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; Taking such other and further action as deemed necessary and proper. 3. DATED: 10/21/13 VIRGINIA NEROI Executive Officer Board of Pharmacy Department of Consumer Affairs State of California Complainant SD2013705529 Accusation