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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. 4854

13 **ARCHER MORALES**

DEFAULT DECISION AND ORDER

14 P.O. Box 631

15 La Mirada, CA 90637

[Gov. Code, §11520]

16 **Pharmacy Technician Registration No. TCH**
17 **104744**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about December 2, 2013, Complainant Virginia Herold, in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
21 Accusation No. 4854 against Archer Morales (Respondent) before the Board of Pharmacy.
22 (Accusation attached as Exhibit A.)

23 2. On or about August 8, 2011, the Board of Pharmacy (Board) issued Pharmacy
24 Technician Registration No. TCH 104744 to Respondent. The Pharmacy Technician Registration
25 expired on January 31, 2013, and has not been renewed.

26 3. On or about December 11, 2013, Respondent was served by Certified and First Class
27 Mail copies of the Accusation No. 4854, Statement to Respondent, Notice of Defense, Request
28 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 P.O. Box 631
5 La Mirada, CA 90637.

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. Government Code section 11506 states, in pertinent part:

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 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.

13 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
15 4854.

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

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

20 8. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 4854, finds that
25 the charges and allegations in Accusation No. 4854, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

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1 9. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$2,607.50 as of January 7, 2014.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Archer Morales has subjected his
6 Pharmacy Technician Registration No. TCH 104744 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 evidence contained in the Default Decision Evidence Packet in this case:

11 a. Business & Professions Code sections 490 and 4301(l), in conjunction with California
12 Code of Regulations, title 16, section 1770, for Convictions of Substantially Related Crimes.

13 b. Business & Professions Code section 4301(h) & (j), for Use of a Controlled
14 Substance in a Manner Dangerous to Oneself or Another.

15 c. Business & Professions Code section 4301(f), for Acts Involving Moral Turpitude,
16 Dishonesty, Fraud, Deceit, or Corruption.

17 d. Business & Professions Code section 4301(o), for Unprofessional Conduct/Violation
18 of Licensing Chapter.

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ORDER

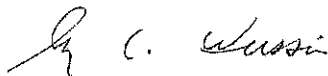
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 104744, heretofore issued to Respondent Archer Morales, is revoked.

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 March 10, 2014.

It is so ORDERED ON February 7, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:LA2013509899

Attachment: Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
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7 *Attorneys for Complainant*

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. 4854

13 **ARCHER MORALES**
P.O. Box 631
La Mirada, CA 90637

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 104744

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about August 8, 2011, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 104744 to Archer Morales (Respondent). The Pharmacy
24 Technician Registration expired on January 31, 2013, and was cancelled on May 5, 2013,
25 pursuant to Business & Professions Code section 4402, subdivision (e).

26 **JURISDICTION**

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

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued."

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

5. Section 4300 provides in pertinent part, that every license issued by the Boards is subject to discipline, including suspension or revocation.

6. Section 4300.1 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."

7. Section 4301 states, in pertinent part:

"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:

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

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6 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
7 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
8 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
9 to the extent that the use impairs the ability of the person to conduct with safety to the public the
10 practice authorized by the license.

11
12 "(j) The violation of any of the statutes of this state, or any other state, or of the United
13 States regulating controlled substances and dangerous drugs.

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment.

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5 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
6 violation of or conspiring to violate any provision or term of this chapter or of the applicable
7 federal and state laws and regulations governing pharmacy, including regulations established by
8 the board or by any other state or federal regulatory agency."

9 REGULATORY PROVISIONS

10 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

17 COST RECOVERY

18 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
19 law judge to direct a licentiate found to have committed a violation or violations of the licensing
20 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
21 case.

22 10. CONTROLLED SUBSTANCE

23 "Methamphetamine," is a Schedule II controlled substance as designated by Health and
24 Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to
25 Section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Convictions of Substantially Related Crimes)

3 11. Respondent is subject to disciplinary action under Sections 4301, subdivision (l) and
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
5 Respondent was convicted of crimes which are substantially related to the qualifications,
6 functions or duties of a pharmacy technician, as follows:

7 a. On or about April 17, 2012, after pleading guilty, Respondent was convicted of one
8 misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the
9 influence of alcohol or drugs] in the criminal proceeding entitled *The People of the State of*
10 *California v. Archer Morales aka Naun Espinosa* (Super. Ct. Orange County, 2012, No.
11 11NM19991). The Court placed Respondent on three years probation, and ordered him to
12 complete a three-month First-Offender Alcohol Program and the Mother's Against Drunk Driving
13 (MADD) Victim's Panel, among other terms and conditions.

14 b. The circumstances surrounding the conviction are that on or about August 31, 2011,
15 officers of the Fullerton Police Department observed Respondent stopped at a red light, and when
16 they pulled up behind him, saw Respondent accelerate through the red light, in violation of
17 Vehicle Code section 21453, subdivision (a). Officers then stopped Respondent, and while
18 speaking to him, he displayed objective symptoms of someone under the influence of a central
19 nervous system stimulant. Respondent was observed to be very nervous, his speech was fast, his
20 pupils were slow to react when light was shined on them, and he moved his hands rapidly while
21 talking. Respondent admitted to officers that he had used "meth", one and a half days earlier.
22 Respondent was subsequently arrested for violating Vehicle Code section 23152, subdivision (a)
23 [driving under the influence of alcohol or drugs]. During the booking procedure, Respondent
24 submitted to a blood test, which was positive for the presence of Methamphetamine.

25 c. On or about June 20, 2013, after pleading guilty, Respondent was convicted of
26 violating Penal Code section 415, subdivision (2) [disturbing the peace] in the criminal
27 proceeding entitled *The People of the State of California v. Archer Morales* (Super. Ct. San
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1 Bernardino County, 2013, No. MSB1301142). The Court ordered Respondent to pay a \$450.00
2 fine.

3 d. The circumstances surrounding the conviction are that on or about September 20,
4 2012, a 17-year-old middle school student reported to authorities that Respondent was following
5 her while she was walking to school, which caused her to fear for her safety. When the student
6 walked into the parking lot of the middle school, Respondent ran behind a tree and stared at the
7 student while talking on his cell phone. A police officer of the Colton Police Department stopped
8 Respondent, and noticed while speaking with him that he had a strong odor of an alcoholic
9 beverage emitting from his breath, and that he had red, bloodshot, watery eyes. Respondent told
10 police he did not remember following a female and he denied all allegations. During a pat-down
11 search of Respondent, he advised an officer that he had a small bag of marijuana in his pocket.
12 Respondent was subsequently arrested for violating Penal Code section 647.6 [annoying a child]
13 and Health & Safety Code section 11357, subdivision (b) [possession of marijuana].

14 SECOND CAUSE FOR DISCIPLINE

15 (Use of a Controlled Substance In A Manner Dangerous to Oneself or Another)

16 12. Respondent is subject to disciplinary action under Section 4301, subdivisions (h) and
17 (j), in that or on about August 31, 2011, Respondent used a controlled substance in a manner
18 which was dangerous or injurious to himself and/or to others. Complainant refers to, and by this
19 reference incorporates, the allegations set forth above in Paragraph 12, subparagraph (b), as
20 though set forth fully.

21 THIRD CAUSE FOR DISCIPLINE

22 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

23 13. Respondent is subject to disciplinary action under Section 4301, subdivision (f), in
24 that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption
25 with the intent to substantially benefit himself, or substantially injure another, in that or on about
26 September 20, 2012, Respondent followed and annoyed a female student while she was walking
27 to school. Complainant refers to, and by this reference incorporates, the allegations set forth
28 above in Paragraph 12, subparagraph (d), as though set forth fully.

1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct/ Violation of Licensing Chapter)

3 14. Respondent is subject to disciplinary action under Section 4301, subdivision (o), in
4 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
5 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
6 forth above in Paragraphs 11 through 13, inclusive, as though set forth fully.

7 DISCIPLINE CONSIDERATIONS

8 15. To determine the degree of discipline, if any, to be imposed on Respondent,
9 Complainant alleges, as follows:

10 a. On or about August 19, 2011, Respondent was convicted of one misdemeanor count
11 of violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding
12 entitled *The People of the State of California v. Archer Morales* (Super. Ct. Orange County, 2011,
13 No. 11NM04759.) The Court sentenced Respondent to serve one day in Orange County Jail and
14 placed him on three years probation, with terms and conditions.

15 b. The circumstances surrounding the conviction are that, on or about February 1, 2011,
16 Respondent was arrested.

17 c. On or about September 7, 2005, Respondent was convicted of one misdemeanor
18 count of violating Penal Code section 243, subdivision (e)(1) [battery on spouse or cohabitant] in
19 the criminal proceeding entitled *The People of the State of California v. Archer Morales* (Super.
20 Ct. Los Angeles County, 2005, No. 05WM08288.) The Court sentenced Respondent to serve 30
21 days in the Los Angeles County Jail and placed him on three years probation, with terms and
22 conditions.

23 d. The circumstances surrounding the conviction are that, on or about August 31, 2005,
24 Respondent was arrested.

25 e. On or about July 29, 2005, Respondent was convicted of one misdemeanor count of
26 violating Penal Code section 415, subdivision (2) [disturbing the peace] in the criminal
27 proceeding entitled *The People of the State of California v. Archer Morales* (Super. Ct. Los
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1 Angeles County, 2005, No. 05WM06916.) The Court placed Respondent on three years
2 probation, with terms and conditions.

3 f. The circumstances surrounding the conviction are that, on or about July 23, 2005,
4 Respondent was arrested.

5 PRAYER

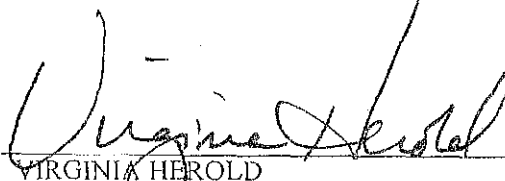
6 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
7 and that following the hearing, the Board issue a decision:

8 1. Revoking or suspending Pharmacy Technician Registration No. TCH 104744, issued
9 to Archer Morales;

10 2. Ordering Archer Morales to pay the Board the reasonable costs of the investigation
11 and enforcement of this case, pursuant to section 125.3; and

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

13
14 DATED: 12/2/13


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

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