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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. 4901

13 **SABRINA GUTIERREZ**
14 **232 Pearl Street**
15 **King City, CA 93930**
16 **Pharmacy Technician Registration No.**
17 **TCH115441**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about May 12, 2014, Complainant Virginia K. Herold, in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Accusation No. 4901 against Sabrina Gutierrez (Respondent) before the Board of Pharmacy.
24 (Accusation attached as Exhibit A.)

25 2. On or about November 7, 2011, the Board of Pharmacy (Board) issued Pharmacy
26 Technician Registration No. TCH115441 to Respondent. The Pharmacy Technician Registration
27 expired on September 30, 2013, and has not been renewed.
28

1 3. On or about May 12, 2014, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 4901, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is:

7 232 Pearl Street
8 King City, CA 93930.

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. 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
15 of the accusation not expressly admitted. Failure to file a notice of defense shall
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
17 may nevertheless grant a hearing.

18 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
19 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4901.

20 7. 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
24 respondent.

25 8. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 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. 4901, finds that
the charges and allegations in Accusation No. 4901, are separately and severally, found to be true
and correct by clear and convincing evidence.

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 \$1,352.50 as of September 29, 2014.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Sabrina Gutierrez has subjected
6 her Pharmacy Technician Registration No. TCH115441 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. Conviction of a crime (Business and Professions Code, § 3401, subd. (I)).

12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH115441, issued to
14 Respondent Sabrina Gutierrez, is revoked.

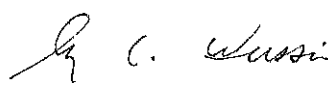
15 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
16 written motion requesting that the Decision be vacated and stating the grounds relied on within
17 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
18 vacate the Decision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

19 This Decision shall become effective on December 5, 2014.

20 It is so ORDERED November 5, 2014.

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 By


25 STAN C. WEISSER
26 Board President

27 90439225.DOC
28 DOJ Matter ID:SF2013902002

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4901

12 **SABRINA GUTIERREZ**
13 **232 Pearl Street**
14 **King City, CA 93930**

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
16 **115441**

Respondent.

17
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 November 7, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 115441 to Sabrina Gutierrez (Respondent). The Pharmacy Technician
24 Registration expired on September 30, 2013, and has not been renewed.

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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 unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300 of the Code states, in relevant part:

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

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

"(1) Suspending judgment.

"(2) Placing him or her upon probation.

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

"(4) Revoking his or her license.

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

...

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

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

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES

4 7. Section 4301 of the Code states, in relevant part:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
7 Unprofessional conduct shall include, but is not limited to, any of the following:

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

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1 COST RECOVERY

2 8. Section 125.3 of the Code states, in relevant part, that the Board may request the
3 administrative law judge to direct a licensee found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CAUSE FOR DISCIPLINE**
7 **(Conviction of a Crime)**
8 **(Business and Professions Code § 4301, subd. (I))**

9 9. Respondent has subjected her Pharmacy Technician Registration to disciplinary
10 action under Code section 4301, subdivision (I), in that she was convicted of a crime substantially
11 related to the qualifications, functions, and duties of a pharmacy technician. Specifically, on or
12 about October 4, 2013, in a criminal proceeding entitled *The People of the State of California v.*
13 *Sabrina Gutierrez*, in the Monterey County Superior Court, Case Number SS131407A,
14 Respondent was convicted, upon her plea of no contest, to one count of violating section
15 21810 of the Penal Code (possession of metal knuckles), a misdemeanor.¹ Respondent was
16 sentenced to serve 40 days in county jail² and placed on probation for 3 years. The Court further
17 ordered Respondent to pay a fine of \$255.00, and to pay various court fees. The facts underlying
18 the arrest are explained below.

19 10. On or about July 16, 2013, Soledad police officers conducted a traffic stop of a
20 vehicle being driven by Respondent's boyfriend, a known gang member who was on Post Release
21 Community Supervision search terms. Respondent was a passenger in the vehicle. In her purse,
22 on the floor of the vehicle, officers found five small zip lock baggies containing
23 methamphetamine, two empty sandwich baggies with methamphetamine residue, a glass
24 methamphetamine pipe, and brass knuckles. More methamphetamine was found in other parts of

25 ¹ The District Attorney dismissed the other charges in the criminal complaint under Penal
26 Code section 1385 (dismissal in furtherance of justice). These dismissed charges were violations
27 of Health and Safety Code sections 11379, subdivision (a) (transportation of a controlled
28 substance), 11378 (possession of a controlled substance for sale), and 11364, subdivision (a)
(possession of controlled substance paraphernalia).

² The sentence allowed for Respondent to participate in the Work Alternative Program in
lieu of jail time.

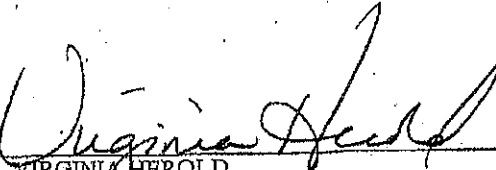
1 the vehicle. Respondent's boyfriend told police that he gave the drugs and the methamphetamine
2 pipe to Respondent to hide in her purse when he noticed that the vehicle was being stopped.
3 Respondent's boyfriend also told police that he gave the brass knuckles to Respondent "a while
4 back" for "self defense." Respondent and her boyfriend were arrested. Respondent was initially
5 charged with transporting a controlled substance (Health and Saf. Code § 11379, sub. (a)),
6 possessing a controlled substance for sale (Health and Saf. Code § 11378), possessing controlled
7 substance paraphernalia (Health and Saf. Code § 11364, subd. (a)), and possessing metal
8 knuckles. (Pen. Code § 21810.)

9 PRAYER

10 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
11 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 115441,
13 issued to Sabrina Gutierrez;
14 2. Ordering Sabrina Gutierrez to pay the Board of Pharmacy the reasonable costs of the
15 investigation and enforcement of this case, under Business and Professions Code section 125.3;
16 3. Taking such other and further action as deemed necessary and proper.

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18
19 DATED: 5/2/14


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

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