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		BEFORE THE	
	8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
	9	STATE OF CALIFORNIA	
	10		
	11	In the Matter of the Accusation Against: Case No. 4965	
	12	RENEE MIRAMONTES DEFAULT DECISION AND ORDER	
	13	901 Via Verde Del Rey Oaks, CA 93940	
	14	Pharmacy Technician License No. TCH 25714 [Gov. Code, §11520]	
	15	Respondent.	
	16		
	17	1. On or about February 4, 2014, Complainant Virginia Herold, in her official capacity	
	18		
	19	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed	1
	20	Accusation No. 4965 against Renee Miramontes (Respondent) before the Board of Pharmacy. (A	
	21	copy of the Accusation is attached as exhibit A.)	
	22	2. On or about May 12, 1998, the Board of Pharmacy (Board) issued Pharmacy	
	23	Technician Registraton No. TCH 25714 to Respondent. The Pharmacy Technician Registraton	
	24	was in full force and effect at all times relevant to the charges brought in Accusation No. 4965	
•	25	and will expire on August 31, 2015, unless renewed.	
	26	3. On or about February 11, 2014, Respondent was served by Certified and First Class	
	27	Mail with copies of: Accusation No. 4965; a Statement to Respondent; a Notice of Defense (2	
	28	- copies); a Request for Discovery; and the text of the Discovery-Statutes (Government Code	
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		DEFAULT DECISION AND ORDER	!

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1	sections 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is:	
2	901 Via Verde, Del Rey Oaks, CA 93940. On or about February 13, 2014, the Certified Mail	
3	Return Receipt card associated with the Certified Mail delivery of these materials was signed and	
4	returned by "Renee Miramontes," apparently demonstrating receipt of same by Respondent.	I
5	4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California	I
6	Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes	1
7	thereto, are required to be reported and maintained with the Board.	
8	5. Service of the Accusation was effective as a matter of law under Government Code	
9	section 11505, subdivision (c) and/or Business & Professions Code section 124.	
10	6. Government Code section 11506 states, in pertinent part:	
11	(c) The respondent shall be entitled to a hearing on the merits if the respondent 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	
13	may nevertheless grant a hearing.	
14	7. Respondent failed to file a Notice of Defense within 15 days after service upon her of	
15	the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4965.	
16	8. 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 hearing, the agency may take action based upon the respondent's express admissions	
18	or upon other evidence and affidavits may be used as evidence without any notice to respondent.	
19		
20	9. 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. 4965, finds that	
25	the charges and allegations in Accusation No. 4965, are separately and severally, found to be true	
26	and correct by clear and convincing evidence.	
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DEFAULT DECISION AND ORDER

Taking official notice of its own internal records, pursuant to Business and 10. 1 2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement are \$2,793.50 as of March 20, 2014. 3 DETERMINATION OF ISSUES 4 1. Based on the foregoing findings of fact, Respondent Renee Miramontes has subjected 5 her Pharmacy Technician License No. TCH 25714 to discipline. 6 2. The agency has jurisdiction to adjudicate this case by default. 7 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician 8 License based upon the following violations alleged in the Accusation which are supported by the 9 evidence contained in the Default Decision Evidence Packet in this case.: 10 a. Respondent's License is subject to revocation pursuant to Business and Professions 11 Code section 4301(f), for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, 12 in that between on or about August 1, 2012 and on or about February 19, 2013, Respondent, 13 while employed as a pharmacy technician, diverted/stole controlled substances and dangerous 14 drugs, including Hydrocodone with APAP drug products; 15 b. Respondent's License is subject to revocation pursuant to Business and Professions 16 Code section(s) 4301(j), (o) and/or 4059, and/or Health and Safety Code section 11170, in that 17 Respondent, as described above, furnished to herself or another, conspired to furnish, and/or 18 assisted in or abetted furnishing of, a controlled substance. 19 20 c. Respondent's License is subject to revocation pursuant to Business and Professions Code-section(s)-4301(j), (o)-and/or-4060, and/or-Health-and-Safety-Code-section_11350_and/or-21 11377, in that Respondent, as described above, possessed, conspired to possess, and/or assisted in 22 or abetted possession of, a controlled substance, without a prescription. 23 Respondent's License is subject to revocation pursuant to Business and Professions d. 24 Code section(s) 4301(j) and/or (o), and/or Health and Safety Code section 11173(a), in that 25 Respondent, as described above, obtained, conspired to obtain, and/or assisted in or abetted the 26 obtaining of a controlled substance, by fraud, deceit, subterfuge, or concealment of material fact. 27 /// 28

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DEFAULT DECISION AND ORDER

1	e. Respondent's License is subject to revocation pursuant to Business and Professions
2	Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,
3	section 1770, for the conviction of substantially related crime(s), in that on or about August 13,
4	2013, in People v. Renee Miramontes, Case No. SS130425A in Monterey County Superior Court,
5	based on the conduct described above, Respondent was convicted of violating Penal Code section
6	487(a) (Grand theft > \$400.00), a felony.
7	f. Respondent's License is subject to revocation pursuant to Business and Professions
8	Code section 4301, in that Respondent, as described above, engaged in unprofessional conduct.
9	
10	ORDER
11	IT IS SO ORDERED that Pharmacy Technician License No. TCH 25714, heretofore issued
12	to Respondent Renee Miramontes, is revoked.
13	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
14	written motion requesting that the Decision be vacated and stating the grounds relied on within
15	seven (7) days after service of the Decision on Respondent. The agency in its discretion may
16	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
17	This Decision shall become effective on May 19, 2014.
18	It is so ORDERED April 17, 2014.
19	BOARD OF PHARMACY
20	DEPARTMENT OF CONSUMER AFFAIRS
21	STATE OF CALIFORNIA
22	By <u>G</u> C. Wussi
23	STAN C. WEISSER Board President
24	40922499.DOC DOJ Matter ID:SF2013406224
25	Attachment:
26	Exhibit A: Accusation
27	
	DEFAULT DECISION AND ORDER

Exhibit A

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Accusation

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1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California FRANK H. PACOE Supervising Deputy Attorney General JOSHUA A. ROOM Supervising Deputy Attorney General State Bar No. 214663 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004 Telephone: (415) 703-1299 Facsimile: (415) 703-5480 Attorneys for Complainant BEFORE THE	
8	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS	
9	STATE OF CALIFORNIA	
10	In the Matter of the Accusation Against: Case No. 4965	
11	RENEE MIRAMONTES	
12	901 Via Verde Del Rey Oaks, CA 93940 A C C U S A T I O N	
13	Pharmacy Technician License No. TCH 25714	
14	Respondent.	
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2	at all times relevant to the charges herein and will expire on August 31, 2015, unless renewed.	
2	23	
2	JURISDICTION	
2	25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
2	26 Consumer Affairs, under the authority of the following laws. All section references are to the	
-	27 Business and Professions Code (Code) unless otherwise indicated.	
	28 ///	
	1 Accusati	on

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(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

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STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action
against any holder of a license who is guilty of "unprofessional conduct," defined to include, but
not be 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 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 the person to conduct with safety to the public the
practice authorized by the license.

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

(1) The conviction of a crime substantially related to the qualifications, functions, and duties
of a licensee under this chapter.

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Accusation

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

8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

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

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

15 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous
16 drug or dangerous device except upon the prescription of an authorized prescriber.

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11. Section 4060 of the Code provides, in pertinent part, that no person shall possess any controlled substance, except that furnished upon a valid prescription/drug order.

19 12. Health and Safety Code section 11170 provides that no person shall prescribe,
20 administer, or furnish a controlled substance for himself or herself.

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13. Health and Safety Code section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

14. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
any controlled substance listed in Schedule II (Health and Safety Code section 11055),
subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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Accusation

1	<u>COST RECOVERY</u>
2	15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3	administrative law judge to direct a licentiate found to have committed a violation of the licensing
4	act to pay a sum not to exceed its reasonable costs of investigation and enforcement.
5	
6	CONTROLLED SUBSTANCES / DANGEROUS DRUGS
7	16. Section 4021 of the Code states:
8	"Controlled substance' means any substance listed in Chapter 2 (commencing with Section
9	11053) of Division 10 of the Health and Safety Code."
10	17. Section 4022 of the Code states, in pertinent part:
11	"Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,
12	except veterinary drugs that are labeled as such, and includes the following:
13	"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without
14	prescription,' 'Rx only,' or words of similar import.
15	• • •
16	"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
17	prescription or furnished pursuant to Section 4006."
18	18. Norco, Vicodin, Vicodin ES, Lortab, and Lorcet are among the brand names for
19	compounds of varying dosages of acetaminophen (aka APAP) and hydrocodone, a Schedule III
20	controlled substance as designated by Health and Safety Code section 11056(e)(4) and dangerous
21	drug as designated by Business and Professions Code section 4022. The varying compounds are
22	also known generically as Hydrocodone with APAP. These are all narcotic drugs.
23	
24	FACTUAL BACKGROUND
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26	
27	(PHY 49355) in Carmel, CA, where by virtue of her employment she had access to controlled
28	substances and dangerous drugs.
	4 Accusation

During the tenure of her employment by the CVS Pharmacy in Carmel, Respondent 20. 1 used her access to divert/steal controlled substances and dangerous drugs, including Vicodin 2 and/or other Hydrocodone with APAP controlled substance/dangerous drug products. 3 The exact number of instances of diversion/theft by Respondent, and the full quantity 21. 4 of controlled substances or dangerous drugs diverted/stolen by Respondent, are not known, but in 5 the course of investigations conducted by the pharmacy, by police, and by the Board of Pharmacy, 6 the following were among the observations, admissions, and revelations reported: 7 Beginning in or about August 2012, CVS loss prevention identified apparent a. 8 and/or recurrent shortages in the pharmacy's inventory of Hydrocodone with APAP 7.5/325 9 and/or Hydrocodone with APAP 10/325 (generic Vicodin or Norco). 10 During an interview conducted by loss prevention and/or pharmacy supervisors b. 11 on or about February 19, 2013, Respondent admitted to repeated thefts of Hydrocodone with 12 APAP 7.5/325 and Hydrocodone with APAP 10/325 tablets from the pharmacy. Respondent 13 admitted that during the previous 4 to 6 months, she had taken 120 tablets of Hydrcodone with 14 APAP 7.5/325 and 3,800 tablets of Hydrocodone with APAP 10/325 by secreting tablets on her 15 person and taking them out of the pharmacy. She stated that she took the drugs for her sick father, 16 though she also admitted that she self-administered some of the drugs at her home. 17 During subsequent questioning by law enforcement, Respondent admitted that c. 18 all of the drugs taken were for personal use, rather than for her father as initially claimed. 19 Audit(s) of the controlled substances stock of the CVS pharmacy revealed a d. 20 shortage of approximately 16,714 tablets of Hydrocodone with APAP 10/325 for the period 21 from April 30, 2011 to February 19, 2013. 22 23 FIRST CAUSE FOR DISCIPLINE 24 (Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption) 25 Respondent is subject to discipline under section 4301(f) of the Code, in that 22. 26 Respondent, as described in paragraphs 19 to 21 above, committed acts involving moral turpitude, 27 dishonesty, fraud, deceit, or corruption. 28 5 Accusation

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	1	SECOND CAUSE FOR DISCIPLINE
	2	(Furnishing of Controlled Substance(s))
	3	23. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
	4	4059 of the Code, and/or Health and Safety Code section 11170, in that Respondent, as described
	5	in paragraphs 19 to 21 above, furnished to herself or another without a valid prescription, and/or
	6	conspired to furnish, and/or assisted or abetted furnishing of, a controlled substance.
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	8	THIRD CAUSE FOR DISCIPLINE
	9	(Possession of Controlled Substance(s))
	10	24. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
	11	4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described
	12	in paragraphs 19 to 21 above, possessed, conspired to possess, and/or assisted in or abetted
	13	possession of, a controlled substance, without a prescription.
	14	
	15	FOURTH CAUSE FOR DISCIPLINE
	16	(Obtaining Controlled Substance by Fraud, Deceit or Subterfuge)
	17	25. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code,
	18	and/or Health and Safety Code section 11173(a), in that Respondent, as described in paragraphs
,	19	19 to 21 above, obtained, conspired to obtain, and/or assisted in or abetted the obtaining of a
	20	controlled substance, by fraud, deceit, subterfuge, or concealment of material fact.
•	21	
	22	FIFTH CAUSE FOR DISCIPLINE
	23	(Conviction of Substantially Related Crime(s))
	24	26. Respondent is subject to discipline under section 4301(l) and/or section 490 of the
	25	Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of
	26	substantially related crime(s), in that on or about August 13, 2013, in the criminal case <i>People v</i> .
	27	Renee Miramontes, Case No. SS130425A in Monterey County Superior Court, Respondent was
	28	convicted of violating Penal Code section 487(a) (Grand theft > \$400.00), a felony, as follows:
		6 Accusation

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1	a. On or about April 2, 2013, based on the conduct described in paragraphs 19 to
2	21 above, Respondent was charged by Information in Case No. SS130425A with violating Penal
3	Code section 487(a) (Grand theft > \$400.00), a felony.
4	b. On or about August 13, 2013, in Case No. SS130425A, Respondent pleaded no
5	contest to violating Penal Code section 487(a) (Grand theft > \$400.00), a felony.
6	c. On or about September 19, 2013, imposition of sentence was suspended and
7	Respondent was placed on formal probation for three (3) years on terms and conditions including
8	sixty (60) days in county jail (4 days CTS), participation in counseling/substance abuse treatment
9	as ordered by probation, and payment of restitution, fines and fees.
10	
11	SEVENTH CAUSE FOR DISCIPLINE
12	(Unprofessional Conduct)
13.	27. Respondent is subject to discipline under section 4301 of the Code in that
14	Respondent, as described in paragraphs 19 to 27 above, engaged in unprofessional conduct.
15	
16	PRAYER
17	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
18	and that following the hearing, the Board of Pharmacy issue a decision:
19	1. Revoking or suspending Pharmacy Technician Licesne Number TCH 25714, issued to
20	Renee Miramontes (Respondent);
21	2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
22	enforcement of this case, pursuant to Business and Professions Code section 125.3;
23	3. Taking such other and further action as is deemed necessary and proper.
24	DATED: 2/4/14 (ligina Herold
25	DATED: 219119 VIRGINIAHEROLD Executive Officer
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	7 Accusation