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

In the Matter of the Amended Accusation
Against:

FRANCISCO ANDRES BERLANGA
8 Porter Drive, #1
Royal Oaks, CA 95076
Pharmacy Technician Registration No. TCH
112451

Respondent.

Case No. 4990

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 7, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Amended Accusation No. 4990 against Francisco Andres Berlanga (Respondent) before the Board of Pharmacy. (Amended Accusation attached as Exhibit A.)
2. On or about April 19, 2011, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 112451 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Amended Accusation No. 4990 and will expire on January 31, 2015, unless renewed.

1 3. On or about November 18, 2014, Respondent was served by Certified and First Class
2 Mail copies of Amended Accusation No. 4990, Statement to Respondent, Notice of Defense,
3 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, &
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 8 Porter Drive, #1
8 Royal Oaks, CA 95076.

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. On or about December 23, 2014, the aforementioned documents, which were sent by
13 certified mail, were returned by the U.S. Postal Service marked "Unclaimed" and "Unable To
14 Forward."

15 6. Government Code section 11506 states, in relevant part:

16 (c) The respondent shall be entitled to a hearing on the merits if the respondent
17 files a notice of defense, and the notice shall be deemed a specific denial of all parts
18 of the accusation not expressly admitted. Failure to file a notice of defense shall
19 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
20 may nevertheless grant a hearing.

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
23 4990.

24 8. California Government Code section 11520 states, in pertinent part:

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

 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

1 taking official notice of all the investigatory reports, exhibits and statements contained therein on
2 file at the Board's offices regarding the allegations contained in Accusation No. 4990, finds that
3 the charges and allegations in Accusation No. 4990, are separately and severally, found to be true
4 and correct by clear and convincing evidence.

5 10. Taking official notice of its own internal records, pursuant to Business and
6 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
7 and Enforcement is \$1,947.50 as of December 26, 2014.

8 DETERMINATION OF ISSUES

9 1. Based on the foregoing findings of fact, Respondent Francisco Andres Berlanga has
10 subjected his Pharmacy Technician Registration No. TCH 112451 to discipline.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
13 Registration based upon the following violations alleged in the Accusation which are supported
14 by the evidence contained in the Default Decision Evidence Packet in this case.:

15 a. Conviction of a crime (Business and Professions Code, § 3401, subd. (I));

16 b. Possession of Controlled Substance (Business and Professions Code, §§ 3401,
17 subd. (j), & 4060);

18 c. Conviction of a crime (Business and Professions Code, § 3401, subd. (I)).

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ORDER

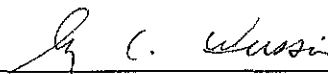
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 112451, issued to Respondent Francisco Andres Berlanga, is revoked.

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 13, 2015.

It is so ORDERED February 11, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

90466148.DOC
DOJ Matter ID:SF2014902479

Attachment:
Exhibit A: Amended Accusation

Exhibit A

Amended Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 TIMOTHY J. MCDONOUGH
Deputy Attorney General
4 State Bar No. 235850
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2134
Facsimile: (510) 622-2270
7 E-mail: Tim.McDonough@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4990

12 **FRANCISCO ANDRES BERLANGA**
13 **8 Porter Drive, #1**
14 **Royal Oaks, CA 95076**

AMENDED ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
112451

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

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

22 2. On or about April 19, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 112451 to Francisco Andres Berlanga (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on January 31, 2015, unless renewed.

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JURISDICTION

1
2 3: This Amended Accusation is brought before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, under the authority of the following laws. All section
4 references are to the Business and Professions Code unless otherwise indicated.

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

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

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

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

13 "(1) Suspending judgment.

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

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

16 "(4) Revoking his or her license.

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

19 ...

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

25 6. Section 4300.1 of the Code states:

26 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
27 operation of law or by order or decision of the board or a court of law, the placement of a license
28 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:

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 "(a) Gross immorality.

9 ...

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

13 ...

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

16 ...

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

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
5 indictment."

6 8. Section 4060 of the Code states:

7 "No person shall possess any controlled substance, except that furnished to a person upon
8 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
9 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
10 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
11 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
12 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
13 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
14 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
15 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
16 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
17 labeled with the name and address of the supplier or producer.

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

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

22 "For the purpose of denial, suspension, or revocation of a personal or facility license
23 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
24 crime or act shall be considered substantially related to the qualifications, functions or duties of a
25 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
26 licensee or registrant to perform the functions authorized by his license or registration in a manner
27 consistent with the public health, safety, or welfare."
28

1 DRUGS

2 10. Marijuana is designated as a schedule I controlled substance by Health and Safety
3 Code section 11054, subdivision (d)(13).

4 COST RECOVERY

5 11. Section 125.3 of the Code provides, in relevant part, that the Board may request the
6 administrative law judge to direct a licentiate found to have committed a violation or violations of
7 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
8 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
9 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
10 included in a stipulated settlement.

11 BACKGROUND

12 12. On or about October 12, 2013, defendant engaged in a series of email messages with a
13 Monterey County Sheriff's deputy. The deputy was posing as a 15-year-old girl. Defendant
14 thought he was meeting a girl for vaginal and oral sex, and was bringing marijuana for the girl.
15 He was arrested when he appeared at the pre-arranged meeting location. The police recovered
16 about one-half ounce of marijuana from defendant's vehicle.

17 13. The Monterey County District Attorney's Office charged Respondent with going to
18 meet a minor for lewd purposes (Pen. Code, § 288.4, subdivision (b)); making contact with a
19 minor with intent to commit sexual offense (Pen. Code, § 288.3, subdivision (a)); attempted oral
20 copulation of a person under 16 (Pen. Code, §§ 664/288a, subd. (b)(2)); and attempting to furnish
21 marijuana to a minor (Pen. Code, § 664/Health & Safety Code, § 11361, subdivision (b)).

22 14. On or about June 13, 2014, in a criminal proceeding entitled *The People of the State*
23 *of California v. Francisco Berlanga*, in the Monterey County Superior Court, Case Number
24 SS132076A, Respondent was convicted, upon his plea of no lo contendre, to one count of
25 contacting a minor with the intent to commit a sexual offense (Pen. Code, § 288.3, subd. (a)), a
26 felony.¹ The court sentenced Respondent to 3 years formal probation with numerous conditions

27 ¹ The District Attorney dismissed the other charges in the criminal complaint under Penal
28 Code section 1385 (dismissal in furtherance of justice) and as part of the plea agreement.

1 including, but not limited to, not knowingly using or possessing alcohol, intoxicants or controlled
2 substances without a prescription from a physician; not being in the presence of children under
3 the age of 18 years unless another responsible adult is present, paying a \$300 restitution fine, and
4 successfully completing a sex offender management program lasting at least one year. Further, as
5 part of the sentence, the court ordered Respondent to serve 210 days in county jail.

6 15. On or about July 30, 2014, in a criminal proceeding entitled, *The People of the State*
7 *of California v. Francisco Andres Berlanga*, in the Monterey County Superior Court, Case
8 Number SS141758A, Respondent was convicted, upon his plea of no lo contendre, to one count
9 of illegally possessing ammunition (Pen. Code, § 30305, subd. (a)(1)), a misdemeanor. The court
10 sentenced Respondent to 3 years of probation with numerous conditions including not possessing,
11 receiving, or transporting any firearm or any deadly weapon. Further Respondent was ordered to
12 serve 90 days in jail and pay various fines and fees.

13 **FIRST CAUSE FOR DISCIPLINE**
14 **(Conviction of a Crime)**
15 **(Business and Professions Code § 4301, subd. (I))**

16 16. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
17 under Code section 4301, subdivision (I), in that on or about June 13, 2014, he was convicted of a
18 crime substantially related to the qualifications, functions, and duties of a pharmacy technician.
19 The conviction and the facts underlying the conviction are explained in paragraphs 12 through 14,
20 above.

21 **SECOND CAUSE FOR DISCIPLINE**
22 **(Possession of a Controlled Substance)**
23 **(Business and Professions Code §§ 4301, subd. (j) & 4060)**

24 17. Respondent has subjected his Pharmacy Technician Registration to disciplinary action
25 under Code section 4301, subdivision (j), in that on or about October 12, 2013, he violated Code
26 section 4060, when he was illegally in possession of marijuana, a controlled substance. The
27 circumstances are explained more fully in paragraph 12, above.

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THIRD CAUSE FOR DISCIPLINE
(Conviction of a Crime)
(Business and Professions Code § 4301, subd. (I))

18. Respondent has subjected his Pharmacy Technician Registration to disciplinary action under Code section 4301, subdivision (I), in that on or about July 30, 2014, he was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician. The conviction is explained in paragraphs 15, above.

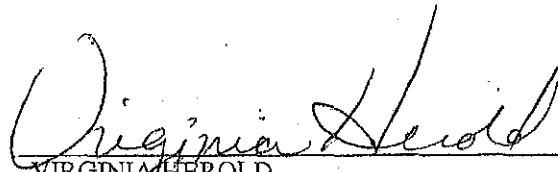
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 112451, issued to Francisco Andres Berlanga;
2. Ordering Francisco Andres Berlanga to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

11/7/14



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

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