1		
2		,
3		
4		
5		
6		
7		
8	BEFORE THE BOARD OF PHARMACY	
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
10	STATEOR	CALIFORNIA
11	In the Matter of the Accusation Against:	C - N- 4006
12	ANTANIQUA MARCELLA CLAY	Case No. 4996
13	7952 Richion Drive Sacramento, CA 95823	OAH No. 2014030631
14	Pharmacy Technician Registration No.	DEFAULT DECISION AND ORDER
15	115768	[Gov. Code, §11520]
16	Respondent.	
17	<u>FINDINGS OF FACT</u>	
18	1. On or about February 18, 2014, Complainant Virginia K. Herold, in her official	
19	capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer	
20	Affairs, filed Accusation No. 4996 against Antaniqua Marcella Clay ("Respondent") before the	
21	Board of Pharmacy. (A true and correct copy of Accusation No. 4996 is attached hereto, marked	
22	Exhibit A, and incorporated herein by reference.)	
23	2. On or about September 7, 2011, the Board issued Pharmacy Technician Registration	
24	No. 115768 to Respondent. The Pharmacy Technician Registration was in full force and effect at	
25	all times relevant to the charges brought in Accusation No. 4996 and will expire on September	
26	30, 2015, unless renewed.	
27	<i>III</i>	
28	///	
		1

2.8

- 3. On or about March 5, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4996, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is: 7952 Richion Drive, Sacramento, CA 95823.
- 4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.
- 5. On or about March 11, 2014, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's address of record and it informed her that an administrative hearing in this matter was scheduled for October 30, 2014. Respondent failed to appear at that hearing.
  - 6. Government Code section 11506 states, in pertinent part:
  - (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 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.
  - 7. California Government Code section 11520 states, in pertinent part:
  - (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 or upon other evidence and affidavits may be used as evidence without any notice to respondent.
- 8. 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 Investigatory Evidence Packet in this matter, as well as 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. 4996, finds that the charges and allegations in Accusation No. 4996, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$2,482.50 as of October 28, 2014.

# **DETERMINATION OF ISSUES**

- 1. Based on the foregoing findings of fact, Respondent Antaniqua Marcella Clay ("Respondent") has subjected her Pharmacy Technician Registration No. 115768 to discipline.
  - 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy ("Board") is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case, as follows:
- a. Respondent violated Business and Professions Code ("Code") sections 4301, subdivision (*l*), and 490, as follows:
- (1) On or about December 20, 2012, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 530.5, subdivision (a), in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 12M07993, a misdemeanor.
- (2) On or about March 13, 2013, she was convicted on her plea of nolo contendere to violating Penal Code section 475, subdivision (a), in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13M01195, a misdemeanor.
- (3) On or about April 15, 2013, she was convicted on her plea of nolo contendere to violating Penal Code section 484, subdivision (a), in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13M01694, a misdemeanor.
- (4) Or about July 27, 2013, she was convicted on her plea of nolo contendere to violating Penal Code section 484, subdivision (a), in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13M05237, a misdemeanor.

Exhibit A

Accusation

1 2	KAMALA D. HARRIS Attorney General of California		
	KENT D. HARRIS Supervising Deputy Attorney General LESLIE A. BURGERMYER Deputy Attorney General		
3			
4	State Bar No. 117576 1300 I Street, Suite 125		
5	P.O. Box 944255 Sacramento, CA 94244-2550		
6	Telephone: (916) 324-5337 Facsimile: (916) 327-8643		
7	Attorneys for Complainant		
8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS		
10	STATE OF CALIFORNIA		
11	In the Matter of the Accusation Against: Case No. 4996		
12	ANTANIQUA MARCELLA CLAY A C C U S A T I O N		
13	7952 Richion Drive Sacramento, CA 95823		
14	Pharmacy Technician Registration No.		
15	115768 Respondent.		
16			
17			
18	Complainant alleges:		
19	<u>PARTIES</u>		
20	1. Virginia Herold ("Complainant") brings this Accusation solely in her official		
21	capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer		
22	Affairs.		
23	2. On or about September 7, 2011, the Board issued Pharmacy Technician Registration		
24	Number 115768 to Antaniqua Marcella Clay ("Respondent"). The Pharmacy Technician		
25	Registration was in full force and effect at all times relevant to the charges brought herein and		
26	will expire on September 30, 2015, unless renewed.		
27	· · · · · · · · · · · · · · · · · · ·		
28	H		

#### JURISDICTION

- 3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code ("Code") unless otherwise indicated.
- 4. Section 4300 of the Code provides that every license issued may be suspended or revoked, placed on probation, or take any other disciplinary action, that the Board, at it's discretion, may deem proper.
  - 5. Section 4300.1 of the Code states as follows:

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.

#### STATUTORY PROVISIONS

6. Section 4301 of the Code 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 it not 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.
- (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
- (1) The conviction of a crime substantially related to the qualifications, functions, and duties of a license under this chapter. . . . In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea of verdict of guilty or a conviction following a plea of nole contendere is deemed to be a conviction within the meaning of this provision. The board may take action 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 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to

Accusation

enter a lea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

- 7. Section 490 of the Code 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.

# **COST RECOVERY**

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

### FIRST CAUSE FOR DISCIPLINE

#### (Criminal Convictions)

- 9. Respondent is subject to disciplinary action under Code sections 4301, subdivision (1), and 490, in that she was convicted of crimes substantially related to the qualifications, functions, and duties of a licensee as alleged below:
- 10. On or about December 20, 2012, in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 12M07993, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 530.5, subdivision (a) [obtained identifying information of another, without consent, to use for unlawful purposes], a misdemeanor.

- a. The underlying circumstances are as follows: On or about December 4, 2012, Respondent obtained personal identifying information for victim D.Y., without authorization, and used the victim's personal information for the unlawful purpose of obtaining and attempting to obtain credit, goods, service, and information in the victim's name, and without consent.
- 11. On or about March 13, 2013, in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13M01195, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 475, subdivision (a) [intent to defraud, knowingly passed a forged, altered, counterfeit, and possessed and received, with intent to pass, a forged, altered, counterfeit check], a misdemeanor.
- a. The underlying circumstances are: On or about December 3, 2012, Respondent entered a Bank of America, located in Sacramento, California, and intentionally presented a fraudulent and/or counterfeit personal check in the amount of \$740.00 to a teller to cash. The fraudulent and/or counterfeit personal check was to be drawn on the bank account of victim J.M.
- 12. On or about April 15, 2013, in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13M01694, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 484, subdivision (a) [unlawfully steal, take, and carry away the personal property of another], a misdemeanor.
- a. The underlying circumstances are: On or about November 10, 2012, Respondent shoplifted property of Sears, located at Arden Faire Mall, Sacramento, California, that is, she stole intimate apparel, socks, jeans, shirt, and two sweaters, in a value currently unknown, without paying for them.
- 13. On or about July 30, 2013, in the case titled *People v. Antaniqua Marcella Clay*, Sacramento County Superior Court Case No. 13MO5237, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 484, subdivision (a) [unlawfully steal, take, and carry away the personal property of another], a misdemeanor.
- a. The underlying circumstances are: On or about July 27, 2013, Respondent shoplifted property of Kohl's, located in Elk Grove, California, that is, she stole, took, and carried away the property of Kohl's without paying for it.

# SECOND CAUSE FOR DISCIPLINE

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

- 14. Respondent is subject to disciplinary action under Code sections 4301, subdivision (f), in that she committed acts 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, as follows:
- a. On or about October 6, 2012, Respondent committed the act of attempted grand theft in that she obtained three fraudulent Visa credit cards and attempted to use them to purchase a laptop, television, DVD television series, and Motorola wireless 4 at the Best Buy located in Vacaville, California, totaling nearly \$3,300.00.
- b. On or about October 6, 2012, November 10, 2012, December 4, 2012, and July 27, 2013, Respondent committed acts of involving moral turpitude, dishonesty, fraud, deceit, or corruption, as alleged in paragraphs 10, 11, 12, and 13, and their subparts, above, incorporated herein by reference.
- c. On or about December 4, 2012, Respondent entered a Bank of America, located in Elk Grove, California, and intentionally presented a fraudulent and/or counterfeit personal check in the in an unknown amount, to a teller to cash.

### THIRD CAUSE FOR DISCIPLINE

# (Knowingly Signing Document - False Representation of Fact)

15. Respondent is subject to disciplinary action under Code section 4301, subdivision (g), in that she responded "No" on her renewal application to the question "since you last renewed your license, have you had any license disciplined by any governmental agency, or other disciplinary body; or have you been convicted of any crime in any state, the USA and its territories, military court or a foreign country?" The truth is, Respondent had been convicted of the crimes alleged in paragraphs 9, 10, 11, 12, and 13, above, incorporated herein by reference.

#### PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number 115768, issued to Antaniqua Marcella Clay;
- 2. Ordering Antaniqua Marcella Clay 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; and
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 2/18/14

VIRGINIA HEROLD

Executive Officer Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

SA2013113648 / 11251357.doc