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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. 5261

13
14 **EDWARD J. QUINAGON**
15 **8789 Leigh Avenue**
16 **Spring Valley, CA 91977**
17 **Pharmacy Technician Registration No. TCH**
18 **28249**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

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21 **FINDINGS OF FACT**

22 1. On or about December 2, 2014, Complainant Virginia K. Herold, in her official
23 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
24 filed Accusation No. 5261 against Edward J. Quinagon (Respondent) before the Board of
25 Pharmacy. (Accusation attached as Exhibit A.)

26 2. On or about January 28, 1999, the Board of Pharmacy (Board) issued Pharmacy
27 Technician Registration No. TCH 28249 to Respondent. The Pharmacy Technician Registration
28 expired on July 1, 2014, and has not been renewed.

1 3. On or about December 29, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5261, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
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 8789 Leigh Avenue Spring Valley, CA 91977.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about January 14, 2015, the aforementioned documents were returned by the
11 U.S. Postal Service marked "No Forwarding Address." The address on the documents was the
12 same as the address on file with the Board. Respondent failed to maintain an updated address
13 with the Board and the Board has made attempts to serve the Respondent at the address on file.
14 Respondent has not made himself available for service and therefore, has not availed himself of
15 his right to file a notice of defense and appear at hearing.

16 6. Government Code section 11506 states, in pertinent part:

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

22 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 5261.

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

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

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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 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. 5261, finds that the charges and allegations in Accusation No. 5261, are separately and severally, found to be true and correct by clear and convincing evidence.

10. 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 \$8,390 as of January 27, 2015.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Edward J. Quinagon has subjected his Pharmacy Technician Registration No. TCH 28249 to discipline.

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

3. The Board of Pharmacy 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 Evidence Packet in this case.:

a. Respondent has subjected his registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

b. Respondent has subjected his registration to discipline under section 4301, subdivision (f) of the Code for unprofessional conduct in that on or about July 13, 2012 Respondent committed acts involving fraud, deceit, and dishonesty, as described in paragraph 14, above.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 28249, heretofore issued to Respondent Edward J. Quinagon, is revoked.

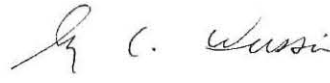
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant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

This decision shall become effective on May 1, 2015.

It is so ORDERED on April 1, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By


STAN C. WEISSER
Board President

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Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LAURO A. PAREDES
Deputy Attorney General
4 State Bar No. 254663
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2091
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 5261

13 **EDWARD J. QUINAGON**
14 **8789 Leigh Avenue**
Spring Valley, CA 91977

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
16 **28249**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about January 28, 1999, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 28249 to Edward J. Quinagon (Respondent). The Pharmacy
25 Technician Registration expired on March 31, 2014 and was cancelled on July 1, 2014, and has
26 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 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. 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 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.

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

1 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'
2 and 'registration.'

3 9. Section 4301 of the Code states:

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

8

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

12

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

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

...

(b) When considering the denial of a facility or personal license under
Section 480 of the Business and Professions Code, the board, in evaluating the
rehabilitation of the applicant and his present eligibility for licensing or
registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under
consideration as grounds for denial.

1 (2) Evidence of any act(s) committed subsequent to the act(s) or
2 crime(s) under consideration as grounds for denial under Section 480 of the
Business and Professions Code.

3 (3) The time that has elapsed since commission of the act(s) or
4 crime(s) referred to in subdivision (1) or (2).

5 (4) Whether the applicant has complied with any terms of parole,
6 probation, restitution or any other sanctions lawfully imposed against the
applicant.

7 (5) Evidence, if any, of rehabilitation submitted by the applicant.

8 11. 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 crime or act shall be considered substantially related to the qualifications,
11 functions or duties of a licensee or registrant if to a substantial degree it evidences
present or potential unfitness of a licensee or registrant to perform the functions
12 authorized by his license or registration in a manner consistent with the public health,
safety, or welfare.

13 DRUGS

14 12. Hydrocodone/apap is a Schedule III controlled substance as designated by Health and
15 Safety Code section 11056(e)(3), and is a dangerous drug pursuant to Business and Professions
16 Code section 4022. Hydrocodone is a narcotic pain reliever.

17 COSTS

18 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
19 administrative law judge to direct a licentiate found to have committed a violation or violations of
20 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
21 enforcement of the case, with failure of the licentiate to comply subjecting the license to not
22 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
23 may be included in a stipulated settlement.

24 FIRST CAUSE FOR DISCIPLINE

25 (December 12, 2013 Criminal Conviction for Burglary on July 13, 2012)

26 14. Respondent has subjected his registration to discipline under sections 490 and 4301,
27 subdivision (l) of the Code in that he was convicted of a crime that is substantially related to the
28 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

1 a. On or about December 12, 2013, in a criminal proceeding entitled *People of the State*
2 *of California v. Edward Quinagon*, in San Diego County Superior Court, case number
3 SCD250826, Respondent was convicted on his plea of guilty to violating Penal Code section 459,
4 second degree burglary, a felony and violation of Health and Safety Code section 11368, forgery
5 of a narcotic drug prescription, a felony.

6 b. As a result of the convictions, Respondent was sentenced to 60 days in the
7 custody of the sheriff, with credit for four days, to be served in the Work Release Program.
8 Respondent was granted three years formal probation, and ordered to pay fees, fines, and
9 restitution, submit to a Fourth Amendment waiver, and comply with felony probation terms.

10 c. The facts that led to the convictions are that on or about July 13, 2012,
11 Respondent was employed as a Pharmacy Technician. Without authorization Respondent used
12 the pharmacy ordering system to order 1,000 hydrocodone pills for his personal use. Respondent
13 used the fraudulent hydrocodone order either for his own illegal consumption, or to restock the
14 pharmacy's hydrocodone supply he had previously stolen.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Commission of Acts Involving Dishonesty, Fraud, Deceit & Corruption)**

17 15. Respondent has subjected his registration to discipline under section 4301,
18 subdivision (f) of the Code for unprofessional conduct in that on or about July 13, 2012
19 Respondent committed acts involving fraud, deceit, and dishonesty, as described in paragraph 14,
20 above.

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PRAYER

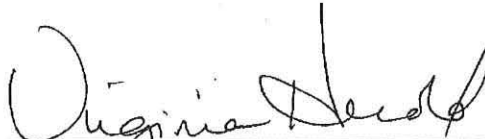
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 28249, issued to Edward J. Quinagon;

2. Ordering Edward J. Quinagon 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: 12/2/14



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

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