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

In the Matter of the Accusation Against:

GILBERT AGUILAR
1123 Ahern Drive
Bassett, CA 91746

Pharmacy Technician Registration No. TCH
99051

Respondent.

Case No. 5272

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 15, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5272 against Gilbert Aguilar (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about March 22, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 99051 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5272 and will expire on May 31, 2015, unless renewed.

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1 3. On or about December 9, 2014, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5272, 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:

7 1123 Ahern Drive
8 Bassett, CA 91746.

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 15, 2014, the Attorney General's office received the certified
13 mail receipt signed by "Margarita Aguilar," and dated December 12, 2014. The regular mail was
14 not returned.

15 6. Government Code section 11506 states, in pertinent 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 5272.

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.

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1 9. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 5272, finds that
6 the charges and allegations in Accusation No. 5272, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 10. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement is \$ 1,455.00 as of November 15, 2014.

11 DETERMINATION OF ISSUES

12 1. Based on the foregoing findings of fact, Respondent Gilbert Aguilar has subjected his
13 Pharmacy Technician Registration No. TCH 99051 to discipline.

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

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

18 a. Respondent is subject to disciplinary action under sections 4300 and 4301,
19 subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in
20 that, Respondent was in possession of methamphetamine, a controlled substance / dangerous
21 drug, as follows:

22 (1) On or about April 3, 2014, a West Covina Police Officer conducted a
23 traffic enforcement stop where Respondent was the passenger in the vehicle. When the officer
24 asked both occupants if there was anything illegal in the vehicle, Respondent appeared to be very
25 nervous and would not make eye contact with the officer. Respondent stated, "I have some dope
26 in my pocket." Respondent removed a black cloth sack from his right cargo short pocket and a
27 clear glass Methamphetamine pipe, wrapped in a napkin, from his waistband. The cloth sack
28 contained three clear plastic baggies. One of the baggies was empty and the other two baggies

1 contained a usable quantity of a white crystalline substance consistent with Methamphetamine.
2 The officer conducted a presumptive test on the substance and it tested positive for
3 Methamphetamine. Respondent was subsequently arrested for violating Health and Safety Code
4 section 11377, subdivision (a) [possession of a controlled substance]. During the booking
5 procedure, Respondent stated that he purchased the Methamphetamine the previous Sunday for
6 \$30.00. He also admitted to having a slight problem with abusing Methamphetamine and that he
7 needed to quit. Subsequently, on or about April 30, 2014, after pleading guilty, the Court placed
8 Respondent on 18 months Deferred Entry of Judgment for violating Health and Safety code
9 section 11377, subdivision (a) [Possession of a controlled substance] in the criminal proceeding
10 entitled *The People of the State of California v. Gilberto Aguilar* (Super. Ct. L.A. County, 2014,
11 No. KA105309).

12 b. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
13 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
14 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
15 forth above in paragraph 3a, as though set forth fully.

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ORDER

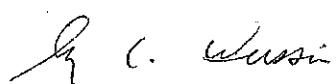
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 99051, heretofore issued to Respondent Gilbert Aguilar, is revoked.

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 April 10, 2015.

It is so ORDERED on March 11, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER

Board President

51700609.DOC
DOJ Matter ID:LA2014512345

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 Cristina Felix
Deputy Attorney General
4 State Bar No. 195663
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2455
6 Facsimile: (213) 897-2804

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. 5272

12 **GILBERT AGUILAR**
1123 Ahern Drive
13 Bassett, CA 91746

ACCUSATION

14 Pharmacy Technician Registration
No. TCH 99051

15 Respondent.

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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 (Board), Department of Consumer Affairs.
22 2. On or about March 22, 2010, the Board issued Pharmacy Technician Registration No.
23 TCH 99051 to Gilbert Aguilar (Respondent). The Pharmacy Technician Registration was in full
24 force and effect at all times relevant to the charges brought herein and will expire on May 31,
25 2015, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 STATUTORY PROVISIONS

2 4. Section 492 states:

3 "Notwithstanding any other provision of law, successful completion of any diversion
4 program under the Penal Code, or successful completion of an alcohol and drug problem
5 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
6 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2.
7 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in
8 that division, from taking disciplinary action against a licensee or from denying a license for
9 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
10 record pertaining to an arrest.

11 This section shall not be construed to apply to any drug diversion program operated by any
12 agency established under Division 2 (commencing with Section 500) of this code, or any
13 initiative act referred to in that division."

14 5. Section 4060 states:

15 "No person shall possess any controlled substance, except that furnished to a person upon
16 prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
17 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
18 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 28361.1, or a
19 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
20 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
21 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
22 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
23 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
24 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
25 labeled with the name and address of the supplier or producer.

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

1 **COST RECOVERY**

2 10. Section 125.3 provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate 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, with failure of the licentiate to comply subjecting the license to not
6 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
7 may be included in a stipulated settlement.

8 **CONTROLLED SUBSTANCE / DANGEROUS DRUG**

9 11. "Methamphetamine," is a schedule II controlled substance as defined in Health and
10 Safety Code section 11055, subdivision (c)(14), and is categorized a dangerous drug pursuant to
11 section 4022.

12 **FIRST CAUSE FOR DISCIPLINE**

13 **(Illegal Possession of a Controlled Substance / Dangerous Drug)**

14 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (j), in conjunction with section 4060, on the grounds of unprofessional conduct, in
16 that, Respondent was in possession of methamphetamine, a controlled substance / dangerous
17 drug, as follows:

18 a. On or about April 3, 2014, a West Covina Police Officer conducted a traffic
19 enforcement stop where Respondent was the passenger in the vehicle. When the officer asked
20 both occupants if there was anything illegal in the vehicle, Respondent appeared to be very
21 nervous and would not make eye contact with the officer. Respondent stated, "I have some dope
22 in my pocket." Respondent removed a black cloth sack from his right cargo short pocket and a
23 clear glass Methamphetamine pipe, wrapped in a napkin, from his waistband. The cloth sack
24 contained three clear plastic baggies. One of the baggies was empty and the other two baggies
25 contained a usable quantity of a white crystalline substance consistent with Methamphetamine.
26 The officer conducted a presumptive test on the substance and it tested positive for
27 Methamphetamine. Respondent was subsequently arrested for violating Health and Safety Code
28 section 11377, subdivision (a) [possession of a controlled substance]. During the booking ..

1 procedure, Respondent stated that he purchased the Methamphetamine the previous Sunday for
2 \$30.00. He also admitted to having a slight problem with abusing Methamphetamine and that he
3 needed to quit.

4 b. Subsequently, on or about April 30, 2014, after pleading guilty, the Court placed
5 Respondent on 18 months Deferred Entry of Judgment for violating Health and Safety code
6 section 11377, subdivision (a) [Possession of a controlled substance] in the criminal proceeding
7 entitled *The People of the State of California v. Gilberto Aguilar* (Super. Ct. L.A. County, 2014,
8 No. KA105309).

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

11 13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
12 that Respondent committed acts of unprofessional conduct and/ or violated provisions of the
13 licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set
14 forth above in paragraph 12, as though set forth fully.

15 **PRAYER**

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

18 1. Revoking or suspending Pharmacy Technician Registration No. TCH 99051, issued
19 to Gilbert Aguilar;

20 2. Ordering Gilbert Aguilar to pay the Board the reasonable costs of the investigation
21 and enforcement of this case, pursuant to section 125.3; and

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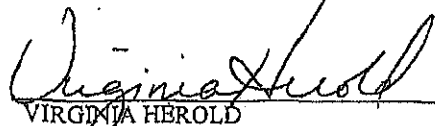
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3. Taking such other and further action as deemed necessary and proper.

DATED: 11/15/14



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

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