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

In the Matter of the Accusation Against:  
  
**KHIN MAUNG LINN**  
**14 Baldwin Ave.**  
**Daly City, CA 94015**  
  
**Pharmacy Technician License No. TCH 104231**  
  
Respondent.

Case No. 5363

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 31, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5363 against Khin Maung Linn (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)

2. On or about June 24, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 104231 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 5363 and will expire on May 31, 2016, unless renewed.

3. On or about April 16, 2015, Respondent was served by Certified and First Class Mail with copies of: Accusation No. 5363; a Statement to Respondent; a Notice of Defense (2 copies); a Request for Discovery; and the text of the Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7), at Respondent's address of record which was and is: 14 Baldwin Ave., Daly City, CA 94015.

1 4. Pursuant to Business and Professions Code section 136 and/or 4100, and/or California  
2 Code of Regulations, title 16, section 1704, Respondent's address of record, and any changes  
3 thereto, are required to be reported and maintained with the Board.

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

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

7 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
8 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
9 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.

10 7. Respondent failed to file a Notice of Defense within 15 days after service of the  
11 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5363.

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

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

16 9. Pursuant to its authority under Government Code section 11520, the Board finds  
17 Respondent is in default. The Board will take action without further hearing and, based on the  
18 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
19 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
20 file at the Board's offices regarding the allegations contained in Accusation No. 5363, finds that  
21 the charges and allegations in Accusation No. 5363, are separately and severally, found to be true  
22 and correct by clear and convincing evidence.

23 10. Taking official notice of its own internal records, pursuant to Business and  
24 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
25 and Enforcement are \$1,325.50 as of September 28, 2015.

26 DETERMINATION OF ISSUES

27 1. Based on the foregoing findings of fact, Respondent Khin Maung Linn has subjected  
28 his Pharmacy Technician License No. TCH 104231 to discipline.

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

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

5           a.    Respondent's License is subject to revocation pursuant to Business and Professions  
6 Code section(s) 4301(l) and/or 490, by reference to California Code of Regulations, title 16,  
7 section 1770, for the conviction of substantially related crime(s), in that on or about April 17,  
8 2014, in the criminal case *People v. Khin Maung Linn*, Case No. NF424006 in San Mateo County  
9 Superior Court, Respondent was convicted of violating Penal Code section 460, subdivision (b)  
10 (Larceny), a misdemeanor. Further, during the investigation leading to Respondent's arrest and  
11 subsequent conviction, a search of Respondent's home discovered a usable quantity of **cocaine**.

12           b.    Respondent's License is subject to revocation pursuant to Business and Professions  
13 Code section 4301(f), in that Respondent, as stated above, committed acts involving moral  
14 turpitude, dishonesty, fraud, deceit, or corruption.

15           c.    Respondent's License is subject to revocation pursuant to Business and Professions  
16 Code section 4301(j) and/or (o) and/or section 4060 and/or Health and Safety Code section  
17 11350, in that Respondent, as stated above, possessed, conspired to possess, and/or assisted in or  
18 abetted possession of, a controlled substance, without a prescription.

19           d.    Respondent's License is subject to revocation pursuant to Business and Professions  
20 Code section 4301, in that Respondent, as stated above, engaged in unprofessional conduct.

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ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 104231, heretofore issued to Respondent Khin Maung Linn, 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 December 18, 2015.

It is so ORDERED November 18, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

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DOJ Matter ID:SF2015400179

Attachment:  
Exhibit A: Accusation

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# Exhibit A

Accusation

(KHIN MAUNG LINN)

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
Supervising Deputy Attorney General  
4 State Bar No. 214663  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1299  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 5363

11 **KHIN MAUNG LINN**  
12 **14 Baldwin Ave.**  
13 **Daly City, CA 94015**

**A C C U S A T I O N**

14 **Pharmacy Technician License No. TCH 104231**

15 Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about June 24, 2010, the Board of Pharmacy issued Pharmacy Technician  
21 License No. TCH 104231 to Khin Maung Linn (Respondent). The License was in full force and  
22 effect at all times relevant to the charges herein and will expire on May 31, 2016, unless renewed.

23  
24 JURISDICTION

25 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
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 8. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
2 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
3 to the qualifications, functions or duties of the license.

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

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

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

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

16 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
17 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
18 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

19  
20 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

21 13. Section 4021 of the Code states:

22 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
23 11053) of Division 10 of the Health and Safety Code."

24 14. Section 4022 of the Code states, in pertinent part:

25 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,  
26 except veterinary drugs that are labeled as such, and includes the following:

27 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without  
28 prescription,' 'Rx only,' or words of similar import.



1 ...  
2 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
3 prescription or furnished pursuant to Section 4006.”

4 15. **Cocaine** is a Schedule I (in base/rock/crack form) or Schedule II controlled substance  
5 as designated by Health and Safety Code sections 11054(f)(1) and 11055(b)(6) and a dangerous  
6 drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

7  
8 FIRST CAUSE FOR DISCIPLINE

9 (Conviction of Substantially Related Crime(s))

10 16. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
11 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
12 substantially related crime(s), in that on or about April 17, 2014, in the criminal case *People v.*  
13 *Khin Maung Linn*, Case No. NF424006 in San Mateo County Superior Court, Respondent was  
14 convicted of violating Penal Code section 460, subdivision (b) (Larceny), a misdemeanor. The  
15 conviction was entered as follows:

16 a. On or about November 12, 2013, Daly City Police responded to a report by a  
17 Chevron gasoline station in Daly City that Respondent had attempted to purchase gasoline using a  
18 counterfeit \$100 bill. Upon making contact with Respondent, Daly City Police found him to be in  
19 possession of a total of four (4) counterfeit \$100 bills. During an interview, Respondent said the  
20 police might also find “several” counterfeit \$10 bills in his home. A search warrant executed at  
21 his home found a single counterfeit \$10 bill, and a vial containing a usable quantity of **cocaine**.

22 b. On or about December 12, 2013, in *People v. Khin Maung Linn*, Case No.  
23 NF424006 in San Mateo County Superior Court, Respondent was charged with violating: (1)  
24 Health and Safety Code section 11350, subdivision (a) (Possession of Controlled Substance –  
25 **cocaine**), a felony; (2) Penal Code section 470, subdivision (d) (Forgery), a felony; (3) Penal  
26 Code section 460, subdivision (b) (Larceny), a felony; and (4) Penal Code section 476 (Possess or  
27 Pass Fictitious Bill, Note, or Check), a felony.

28 ///

1 c. On or about April 17, 2014, count (3) was amended to substitute a misdemeanor  
2 count of violating Penal Code section 460, subdivision (b) (Larceny). Respondent pleaded nolo  
3 contendere to this substituted count and was convicted. He also entered a nolo contendere plea as  
4 to count (1), and as to this count he was diverted from further prosecution/granted deferred entry  
5 of judgment for a period of eighteen (18) months, on specified terms and conditions including  
6 successful completion of rehabilitation efforts. Counts (2) and (4) were dismissed pursuant to the  
7 plea. As to count (3), imposition of sentence was suspended and Respondent was placed on court  
8 probation for a period of two (2) years, on terms and conditions including fifteen (15) days in jail  
9 (with alternative sentencing recommendation), search conditions, and fines and fees.

10  
11 SECOND CAUSE FOR DISCIPLINE

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

13 17. Respondent is subject to discipline under section 4301(f) of the Code, in that, as  
14 described in paragraph 16 above, Respondent committed acts involving moral turpitude,  
15 dishonesty, fraud, deceit, or corruption..

16  
17 THIRD CAUSE FOR DISCIPLINE

18 (Possession of Controlled Substance(s))

19 18. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section  
20 4060 of the Code, and/or Health and Safety Code section 11350, in that Respondent, as described  
21 in paragraph 16 above, possessed, conspired to possess, and/or assisted in or abetted possession  
22 of, a controlled substance, without a prescription.

23  
24 FOURTH CAUSE FOR DISCIPLINE

25 (Unprofessional Conduct)

26 19. Respondent is subject to discipline under section 4301 of the Code in that, as  
27 described in paragraphs 16-18 above, Respondent engaged in unprofessional conduct.

28

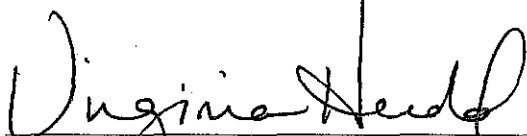
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PRAAYER

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 License No. TCH 104231, issued to Khin Maung Linn (Respondent);
2. Ordering Respondent to pay the Board 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 is deemed necessary and proper.

DATED: 3/31/15



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

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