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

In the Matter of the Accusation Against:

**HECTOR HERNANDEZ  
10557 Tamarack Ave  
Pacoima, CA 91331**

**Pharmacy Technician Registration No. TCH  
133362**

Respondent.

Case No. 5451

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 19, 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. 5451 against Hector Hernandez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about July 1, 2013, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 133362 to Respondent. The Pharmacy Technician Registration expired on April 5, 2015, and has not been renewed.

1           3.    On or about October 30, 2015, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 5451, 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    10557 Tamarack Ave  
8    Pacoima, CA 91331.

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  
11 section 124.

12           5.    Government Code section 11506 states, in pertinent part:

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

18           6.    Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
20 No. 5451.

21           7.    California Government Code section 11520 states, in pertinent part:

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

26           8.    Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 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. 5451, finds that  
the charges and allegations in Accusation No. 5451, are separately and severally, found to be true

1 and correct by clear and convincing evidence.

2 9. Taking official notice of its own internal records, pursuant to Business and  
3 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
4 and Enforcement is \$1,700.00 as of February 5, 2016.

5  
6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Hector Hernandez has subjected  
8 his Pharmacy Technician Registration No. TCH 133362 to discipline.

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

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

13 a. Business and Professions Code sections 490, 4300 and 4301, subdivision (l), in  
14 conjunction with California Code of Regulations, title 16, section 1770, for conviction of a  
15 substantially related crimes.

16 b. Business and Professions Code sections 4300 and 4301, subdivision (f), for  
17 unprofessional conduct of acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 133362, heretofore issued to Respondent Hector Hernandez, 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 July 8, 2016.

It is so ORDERED on June 8, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

51977379.DOC  
DOJ Matter ID:LA2015500818

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(HECTOR HERNANDEZ)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
4 State Bar No. 138213  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2579  
6 Facsimile: (213) 897-2804  
*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. 5451

11 **HECTOR HERNANDEZ**  
12 10557 Tamarack Ave  
13 Pacoima, CA 91331

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH  
133362

15 Respondent.

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18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about July 1, 2013, the Board issued Pharmacy Technician Registration No.  
24 TCH 133362 to Hector Hernandez (Respondent). The Pharmacy Technician Registration expired  
25 and was cancelled on April 5, 2015, pursuant to Business and Professions Code section 4402(e).

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

5 5. Section 493 states:

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

15 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

16 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or  
17 revoked."

18 7. Section 4300.1 states:

19 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation  
20 of law or by order or decision of the board or a court of law, the placement of a license on a  
21 retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of  
22 jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding  
23 against, the licensee or to render a decision suspending or revoking the license."

24 8. Section 4301 states, in pertinent part:

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

28 . . . .

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

4           ....

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

#### 22   REGULATORY PROVISION

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

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



1 consistent with the public health, safety, or welfare."

2 **COST RECOVERY**

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

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Conviction of Substantially Related Crimes)**

9 11. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,  
10 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the  
11 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially  
12 related to the qualifications, functions or duties of a registered pharmacy technician, as follows:

13 a. On or about December 16, 2014, after pleading nolo contendere, Respondent was  
14 convicted of one felony count of violating Penal Code section 594(a) [vandalism] in the criminal  
15 proceeding entitled *The People of the State of California v. Hector Hernandez III* (Super. Ct.  
16 L.A. County, 2014, No. PA079984). The Court sentenced Respondent to three years in jail with  
17 18 months suspended, placed him on 18 months mandatory supervised probation with certain  
18 terms and conditions, and ordered to pay victim restitution.

19 b. The circumstances underlying the conviction are that on or about March 4, 2014,  
20 admittedly, Respondent threw a rock into a neighbor's window.

21 c. On or about December 16, 2014, after pleading nolo contendere, Respondent was  
22 convicted of two felony counts, Counts 1 and 5, of violating Penal Code section 459 [burglary,  
23 second degree] in the criminal proceeding entitled *The People of the State of California v. Hector*  
24 *Hernandez* (Super. Ct. L.A. County, 2014, No. PA082034). The Court sentenced Respondent to  
25 three years in jail with 18 months suspended, placed him on 18 months mandatory supervised  
26 probation with certain terms and conditions, and ordered to pay victim restitution.

27 d. The circumstances underlying the conviction are that on or about August 28, 2014,  
28 Respondent burglarized the business, Xtreme Audio in Santa Clarita, California. Respondent

1 entered through a broken glass back door, and attempted to steal \$2,000.00 worth of items, an  
2 amplifier, an Apple laptop, and a rectangle window glass. Responding law enforcement officers  
3 found Respondent hiding in the business.

4 e. On or about May 28, 2015, after pleading nolo contendere, Respondent was convicted  
5 of one felony count of violating Penal Code section 459 [burglary, second degree] in the criminal  
6 proceeding entitled *The People of the State of California v. Hector Hernandez* (Super. Ct. L.A.  
7 County, 2015, No. PA083414). The Court sentenced Respondent to eight months jail, and  
8 ordered him to pay victim restitution.

9 f. The circumstances underlying the conviction are that on or about June 5, 2014,  
10 Respondent burglarized Valley Korean Central Church in North Hills, California, stealing musical  
11 instruments.

12 **SECOND CAUSE FOR DISCIPLINE**

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

14 12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision  
15 (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral  
16 turpitude, dishonesty, fraud, deceit, or corruption when he committed acts of vandalism and  
17 burglary. Complainant refers to and by this reference incorporates the allegations set forth above  
18 in paragraph 11, inclusive, as though set forth fully.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacy Technician Registration No. TCH 133362, issued  
23 to Hector Hernandez;

24 2. Ordering Hector Hernandez to pay the Board the reasonable costs of the investigation  
25 and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/19/15 Virginia Herold

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

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10/8/2015dmm  
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