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

In the Matter of the Accusation Against:	Case No. 5523
ADRIAN ALFONSO **617 Tamarack Lane** **South San Francisco, CA 94080** **Pharmacy Technician Registration No. TCH 122838** Respondent.	**DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about October 20, 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. 5523 against Adrian Alfonso (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 6, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 122838 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5523 and will expire on September 30, 2016, unless renewed.

3. On or about November 2, 2015, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5523, 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:

617 Tamarack Lane
South San Francisco, CA 94080.

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 December 3, 2015, the aforementioned documents were returned by the U.S. Postal Service marked "Unclaimed."

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. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 5523.

8. 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.

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. 5523, finds that the charges and allegations in Accusation No. 5523 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 are $1,187.50 as of March 22, 2016.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Adrian Alfonso has subjected his Pharmacy Technician Registration No. TCH 122838 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. Business and Professions Code section 4301(j) (violation of any of the statutes of this state regulating controlled substances and dangerous drugs) and section 4060 (illegal possession of controlled substance).

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 122838, heretofore issued to Respondent Adrian Alfonso, is revoked.

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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 at 5:00 p.m. on June 6, 2016.

It is so ORDERED on May 6, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

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Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(ADRIAN ALFONSO)

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

In the Matter of the Accusation Against: **ADRIAN ALFONSO** **617 Tamarack Lane** **South San Francisco, CA 94080** **Pharmacy Technician Registration No. TCH 122838** Respondent.	Case No. 5523 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about September 6, 2012, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 122838 to Adrian Alfonso (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2016, unless renewed.

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 (Code) unless otherwise indicated.

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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 AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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

9. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess a controlled substance in Schedule I, subdivision(s) (b), (c), or (f)(1), Schedule II, subdivision(s) (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

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

"For the purpose of denial, suspension, or revocation of a personal or facility license 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, 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 authorized by her license or registration in a manner consistent with the public health, safety, or welfare."

COST RECOVERY

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

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

12. Section 4021 of the Code states:

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

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

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

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

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

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

FACTUAL BACKGROUND

15. On or about November 8, 2014, San Diego Harbor Police responded to a report of a vehicle driving erratically. Responding officers witnessed the vehicle make an illegal U-turn and initiated a traffic stop. The vehicle smelled of marijuana. The vehicle was searched, and police found cocaine under the passenger seat, where Respondent had been sitting. Respondent admitted that it was cocaine and stated that it was for "personal use."

FIRST CAUSE FOR DISCIPLINE

(Possession of Controlled Substance(s))

16. Respondent is subject to discipline under section 4301(j) and/or section 4060 of the Code, and/or Health and Safety Code section(s) 11350, in that Respondent, as described in

paragraph 15 above, possessed, conspired to possess, and/or assisted in or abetted possession of, a controlled substance, without a prescription.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

17. Respondent is subject to discipline under section 4301 of the Code in that, as described in paragraphs 15 and 16 above, Respondent engaged in unprofessional conduct.

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 122838, issued to Adrian Alfonso;

2. Ordering Adrian Alfonso 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: 10/20/15

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

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