

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

In the Matter of the Accusation Against:  
  
**DEAN RUSSELL SPENCER, JR.**  
**1301 4th Street**  
**Napa, CA 94559**  
**Pharmacy Technician Registration No. TCH**  
**100459**  
  
Respondent.

Case No. 5618

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 21, 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. 5618 against Dean Russell Spencer, Jr. (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about May 17, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 100459 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5618 and expired on December 31, 2015.

1           3.     The lapse in licensure, however, pursuant to Business and Professions Code section  
2 118(b) does not deprive the Board of its authority to institute or continue this disciplinary  
3 proceeding.

4           4.     On or about January 4, 2016, Respondent was served by Certified and First Class  
5 Mail copies of the Accusation No. 5618, Statement to Respondent, Notice of Defense, and  
6 Request for Discovery at Respondent's address of record which, pursuant to Business and  
7 Professions Code section 4100, is required to be reported and maintained with the Board.  
8 Respondent's address of record was and is:

9 1301 4th Street  
10 Napa, CA 94559.

11           5.     Service of the Accusation was effective as a matter of law under the provisions of  
12 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
13 124.

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

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

20           7.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
22 5618.

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

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

28           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

1 file at the Board's offices regarding the allegations contained in Accusation No. 5618, finds that  
2 the charges and allegations in Accusation No. 5618, are separately and severally, found to be true  
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and  
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
6 and Enforcement is \$2,675.00 as of January 29, 2016.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Dean Russell Spencer, Jr. has  
9 subjected his Pharmacy Technician Registration No. TCH 100459 to discipline.

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

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

14 a. Respondent is subject to disciplinary action under section 125.9 of the Code in  
15 conjunction with California Code of Regulations, Title 16, section 1775.1 in that Respondent  
16 failed to pay a citation issued by the Board within 30 days.

17 b. Respondent is subject to disciplinary action under section 4301, subsection (l), of the  
18 code in that respondent was convicted of multiple crimes that are substantially related to the  
19 duties, functions, or qualifications of a pharmacy technician. On or about February 26, 2014, in  
20 Napa County Superior Court Case No. CR 168680, Respondent was convicted of violating Penal  
21 Code Section 415(1), disturbing the peace by fighting, and Penal Code Section 148(a)(1),  
22 obstructing/resisting a public/peace officer. On or about March 24, 2014, In Solano County  
23 Superior Court Case No VCR217067, Respondent was convicted of violating Penal Code Section  
24 148(a)(1), obstructing/resisting a public/peace officer. On or about August 13, 2015, In Napa  
25 County Superior Court Case no. CR173297, Respondent was convicted of violating Penal Code  
26 Section 69, resisting an executive officer.

27 c. Respondent is subject to disciplinary action under section 4301 of the code in that he  
28 was involved in unprofessional conduct. On or about January 26, 2013, Respondent

1 resisted/obstructed a peace officer in Vallejo, California. On October 22, 2013, Respondent  
2 challenged another to a fight in public and resisted arrest in Napa, California. On or about  
3 November 4, 2014, Respondent refused to leave a Walmart after being requested to do so by a  
4 Walmart manager. Respondent was in possession of a switchblade.

5 ORDER

6 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 100459, heretofore  
7 issued to Respondent Dean Russell Spencer, Jr., is revoked.

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

12 This Decision shall become effective at 5:00 p.m. on April 11, 2016.

13 It is so ORDERED on March 11, 2016.

14 BOARD OF PHARMACY  
15 DEPARTMENT OF CONSUMER AFFAIRS  
16 STATE OF CALIFORNIA

17 

18  
19 By \_\_\_\_\_

20 Amy Gutierrez, Pharm.D.  
21 Board President

22 41461434.DOC  
23 DOJ Matter ID:SF2015402719

24 Attachment:  
25 Exhibit A: Accusation

# Exhibit A

Accusation

(DEAN RUSSELL SPENCER, JR.)

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JUSTIN R. SURBER  
Deputy Attorney General  
4 State Bar No. 226937  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 355-5437  
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. 5618

11 **DEAN RUSSELL SPENCER, JR.**  
12 **1301 4th Street**  
13 **Napa, CA 94559**

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
**100459**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 17, 2010, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 100459 to Dean Russell Spencer, Jr. (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on December 31, 2015, unless renewed.

25 **JURISDICTION/STATUTORY PROVISIONS**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
27 Consumer Affairs, under the authority of the following laws. All section references are to the  
28 Business and Professions Code unless otherwise indicated.







1 **REGULATORY PROVISIONS**

2 8. California Code of Regulations Title 16, Section 1775.1 states, in pertinent part, that  
3 the failure of a person or entity cited to pay a fine within 30 days of the date of assessment, unless  
4 the citation is being appealed, may result in disciplinary action by the board.

5 **COSTS**

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

10 **FACTUAL BACKGROUND**

11 10. On or about January 26, 2013, Respondent was arrested for a violating Penal Code  
12 Section 148(a)(1), obstructing/resisting a public/peace officer. Respondent resisted/obstructed a  
13 peace officer in Vallejo, California.

14 11. On or about May 17, 2013, Respondent was arrested for violations of Penal Code  
15 Section 273.5, inflicting corporal injury on spouse/cohabitant and Penal Code Section 236, false  
16 imprisonment. Charges were filed but dismissed.

17 12. On October 22, 2013, Respondent was arrested for violating Penal Code Section  
18 415(1), disturbing the peace by fighting, and Penal Code Section 148(a)(1), obstructing/resisting a  
19 public/peace officer. Respondent challenged another to a fight in public and resisted arrest in  
20 Napa, California.

21 13. On or about December 6, 2013, Respondent was arrested for violating Penal  
22 Code Section 602(0)(1), refusing a police officer's request to leave private property. Respondent  
23 refused to leave the Napa County Homeless Shelter when instructed by officers to do so. Charges  
24 were filed but dismissed.

25 14. On or about December 23, 2013, Respondent was arrested for violating Penal Code  
26 Section 242, battery. Respondent was in a fight at the Hope Center in Napa where he battered  
27 another person.

28

1           15. On or about February 26, 2014, in Napa County Superior Court Case No. CR 169019,  
2 Respondent was convicted of violating Penal Code Section 242/243(a), Battery. The  
3 circumstances leading to the conviction are described in paragraph 14, above.

4           16. On or about February 26, 2014, in Napa County Superior Court Case No. CR 168680,  
5 Respondent was convicted of violating Penal Code Section 415(1), disturbing the peace by  
6 fighting, and Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer. The  
7 circumstances leading to the conviction are described in paragraph 12, above.

8           17. On or about March 14, 2014 Respondent renewed his pharmacy technician license  
9 and indicated on his renewal application form that he had not been convicted of any crime since  
10 his last renewal in 2011. This was not true.

11           18. On or about March 24, 2014, In Solano County Superior Court Case No VCR217067,  
12 Respondent was convicted of violating Penal Code Section 148(a)(1), obstructing/resisting a  
13 public/peace officer, and sentenced to a three year probations period. The facts giving rise to the  
14 conviction are described in paragraph 10, above.

15           19. On or about April 18, 2014, Respondent was arrested for violating Penal Code  
16 Section 21310, possession of a dirk or dagger, and two counts of violating Penal Code Section  
17 1203.2, violating probation. Napa police found Respondent in possession of a dirk or dagger.  
18 Respondent was also in possession of alcohol in violation of his probationary terms.

19           20. On or about April 22, 2014, In Napa County Superior Court Case No. CR170540, a  
20 criminal complaint was filed against Respondent alleging Respondent violated Penal Code  
21 Section 21310, possession of a dirk or dagger. The circumstances leading the charges are  
22 described in paragraph 19, above.

23           21. On or about August 1, 2014, the Board issued a Citation No. CI 2012 56917 to  
24 Respondent. The citation imposed a fine in the amount of \$300.00. That Citation is now final.  
25 Respondent failed to pay the citation. The citation is based in part on the facts described in  
26 paragraphs 11, 13-15, and 17, above.

27           22. On or about November 4, 2014, Respondent was arrested for violating Penal Code  
28 Section 148(a)(1), obstructing/resisting a public/peace officer; Penal Code Section 602.1(a),

1 trespassing; Penal Code Section 21510(b), possession of a switchblade; Penal Code Section 69,  
2 resisting an executive officer; and two counts of Penal Code Section 1203.2, violation of  
3 probation. Respondent refused to leave a Walmart after being requested to do so by a Walmart  
4 manager. Respondent was in possession of a dirk or dagger.

5 23. On or about November 6, 2014, In Napa County Superior Court Case no. CR173297,  
6 a criminal complaint was filed against Respondent alleging Respondent twice violated Penal  
7 Code Section 69, resisting an executive officer, and Penal Code Section 2131, possession of a  
8 dirk or dagger.

9 24. On or about April 2, 2015, Respondent was ordered to be committed to the State  
10 Department of Mental Health, Napa State Hospital, or other facility designated by the California  
11 Department of Mental Health, for a period not to exceed three years, or until mental competency  
12 has been restored. The Court granted the request that the defendant submit to involuntary  
13 medications. This order was in cases CR173297 and CR170540.

14 25. On or about August 13, 2015, In Napa County Superior Court Case no. CR173297,  
15 Respondent was convicted of violating Penal Code Section 69, resisting an executive officer. The  
16 circumstances leading to the conviction are described in paragraph 22, above.

17 **FIRST CAUSE FOR DISCIPLINE**

18 (Failure to comply with citation)

19 26. Respondent is subject to disciplinary action under section 125.9 of the Code in  
20 conjunction with California Code of Regulations, Title 16, section 1775.1 in that respondent  
21 failed to pay a citation issued by the Board within 30 days. The circumstances are described in  
22 paragraph 21, above.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Convictions)

25 27. Respondent is subject to disciplinary action under section 4301, subsection (l), of the  
26 code in that respondent was convicted of multiple crimes that are substantially related to the  
27 duties, functions, or qualifications of a pharmacy technician. The circumstances are described in  
28 paragraphs 10, 12, 16, 18, and 22-25.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Unprofessional Conduct)

3 28. Respondent is subject to disciplinary action under section 4301 of the code in that he  
4 was involved in unprofessional conduct. The circumstances are described in paragraphs 10, 12,  
5 16, 18, and 22-25, above.

6 **DISCIPLINARY CONSIDERATIONS**

7 29. To determine the degree of discipline, if any, to be imposed on Respondent,  
8 Complainant alleges that on or about August 1, 2014, the Board issued a Citation No. CI 2012  
9 56917 to Respondent. The citation imposed fine in the amount of \$300.00. That Citation is now  
10 final. The citation is based in part on the facts described in paragraphs 11, 13-15, and 17, above.

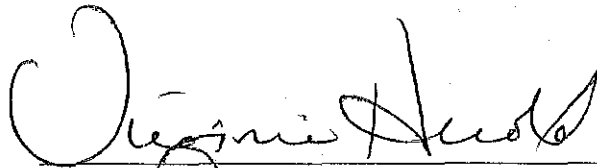
11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 100459,  
15 issued to Dean Russell Spencer, Jr.;
- 16 2. Ordering Dean Russell Spencer to pay the Board of Pharmacy the reasonable costs of  
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
18 125.3;
- 19 3. Taking such other and further action as deemed necessary and proper.

20  
21  
22  
23 DATED: \_\_\_\_\_

12/21/15



24 VIRGINIA HEROLD  
25 Executive Officer  
26 Board of Pharmacy  
27 Department of Consumer Affairs  
28 State of California  
Complainant

SF2015402719  
41380927.doc