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8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 5618	
12			
13	DEAN RUSSELL SPENCER, JR.	DEFAULT DECISION AND ORDER	
14	1301 4th Street Napa, CA 94559	FG G 1 8115001	
15	Pharmacy Technician Registration No. TCH 100459	[Gov. Code, §11520]	
16			
17	Respondent.		
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19 20	FINDINGS OF FACT		
20		mplainant Virginia K. Herold, in her official	
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22 23	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		
23	Pharmacy. (Accusation attached as Exhibit A.)	spencer, in (respondent) before the board of	
25		d of Pharmacy (Board) issued Pharmacy	
26		pondent. The Pharmacy Technician Registration	
20	was in full force and effect at all times relevant to	- · · ·	
28	and expired on December 31, 2015.		
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	(DEAN RUSSELL SPENCI	ER, JR.) DEFAULT DECISION & ORDER Case No. 5618	

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3. The lapse in licensure, however, pursuant to Business and Professions Code section 1 118(b) does not deprive the Board of its authority to institute or continue this disciplinary 2 proceeding. 3 4. On or about January 4, 2016, Respondent was served by Certified and First Class 4 Mail copies of the Accusation No. 5618, Statement to Respondent, Notice of Defense, and 5 Request for Discovery at Respondent's address of record which, pursuant to Business and 6 Professions Code section 4100, is required to be reported and maintained with the Board. 7 Respondent's address of record was and is: 8 9 1301 4th Street Napa, CA 94559. 10 5. Service of the Accusation was effective as a matter of law under the provisions of 11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section 12 124. 13 6. Government Code section 11506 states, in pertinent part: 14 15 (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 16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion 17 may nevertheless grant a hearing. 7. Respondent failed to file a Notice of Defense within 15 days after service upon him 18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 19 5618. 208. California Government Code section 11520 states, in pertinent part: 21 22(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 23or upon other evidence and affidavits may be used as evidence without any notice to respondent. 24 9. Pursuant to its authority under Government Code section 11520, the Board finds 25 Respondent is in default. The Board will take action without further hearing and, based on the 26 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as 27taking official notice of all the investigatory reports, exhibits and statements contained therein on 28 2 (DEAN RUSSELL SPENCER, JR.) DEFAULT DECISION & ORDER Case No. 5618

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 STATE OF CALIFORNIA		
16			
17	Aghcforting		
18			
19	ByAmy Gutierrez, Pharm.D.		
20	Board President		
21	41461434.DOC		
22	DOJ Matter ID:SF2015402719		
23	Attachment: Exhibit A: Accusation		
24			
25			
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28	4		
	(DEAN RUSSELL SPENCER, JR.) DEFAULT DECISION & ORDER Case No. 5618		

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Exhibit A

Accusation

4 -	1) · · · · · · · · · · · · · · · · · · ·				
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				
7	Attorneys for Complainant				
8	BEFORE THE BOARD OF PHARMACY				
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA				
10					
11	In the Matter of the Accusation Against:	Case No. 5618			
12	DEAN RUSSELL SPENCER, JR. 1301 4th Street				
13	Napa, CA 94559	ACCUSATION			
14	Pharmacy Technician Registration No. TCH 100459				
15	Respondent.	-			
16					
17	Complainant alleges:				
18	PAR	<u>FIES</u>			
19	1. Virginia Herold (Complainant) bring	s 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 Russ	ell Spencer, Jr. (Respondent). The Pharmacy			
23	Technician Registration was in full force and effe	ect at all times relevant to the charges brought			
24	herein and will expire on December 31, 2015, un	less renewed.			
25	JURISDICTION/STAT	UTORY PROVISIONS			
26	3. This Accusation is brought before the	e Board of Pharmacy (Board), Department of			
27	Consumer Affairs, under the authority of the follo	owing laws. All section references are to the			
28	Business and Professions Code unless otherwise	indicated.			
]	- periode and the second se			
		ACCUSATION			

Section 118, subdivision (b), of the Code provides that the 4. suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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Section 125.9 of the code states:

a) Except with respect to persons regulated under Chapter 11 (commencing with Section 6 7500), any board, bureau, or commission within the department, the board created by the 7 Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by 9 regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission 10 where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.

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(b) The system shall contain the following provisions:

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(5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the 15 16 citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the 17 assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed 18 without payment of the renewal fee and fine. 19

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Section 4300 of the Code states: 6.

"(a) Every license issued may be suspended or revoked.

"(b) The board shall discipline the holder of any license issued by the board, whose default 22 has been entered or whose case has been heard by the board and found guilty, by any of the 23 following methods: 24

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"(1) Suspending judgment.

"(2) Placing him or her upon probation.

"(3) Suspending his or her right to practice for a period not exceeding one year.

"(4) Revoking his or her license.

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"(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

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7. Section 4301 of the Code states:

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

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9 "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 10 11 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or 12 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the 13 record of conviction shall be conclusive evidence only of the fact that the conviction occurred. 14 The board may inquire into the circumstances surrounding the commission of the crime, in order 15 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or 16 dangerous drugs, to determine if the conviction is of an offense substantially related to the 17 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or 18 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning 19° of this provision. The board may take action when the time for appeal has elapsed, or the 20 judgment of conviction has been affirmed on appeal or when an order granting probation is made 21 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of 22 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not 23 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or 24 indictment. 25 111 26

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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.		
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ACCUSATION

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

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16. On or about February 26, 2014, in Napa County Superior Court Case No. CR 168680,
Respondent was convicted of violating Penal Code Section 415(1), disturbing the peace by
fighting, and Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer. The
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.

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

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

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

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

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

FIRST CAUSE FOR DISCIPLINE

(Failure to comply with citation)

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

SECOND CAUSE FOR DISCIPLINE

(Convictions)

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

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56917 to Respondent. The citation imposed fine in the amount of \$300.00. That Citation is now			
117, above.			
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:			
H 100459,			
issued to Dean Russell Spencer, Jr.;			
2. Ordering Dean Russell Spencer to pay the Board of Pharmacy the reasonable costs of			
the investigation and enforcement of this case, pursuant to Business and Professions Code section			
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