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

9 In the Matter of the Accusation Against:

Case No. 5789

10 **MIRIAM VALERYA HERNANDEZ**
11 2489 Shield Drive
12 Union City, CA 94587

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

13 **Pharmacy Technician Registration No. TCH**
14 **151024**

Respondent.

15 FINDINGS OF FACT

16 1. On or about March 22, 2017, Complainant Virginia K. Herold, in her official capacity as
17 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation
18 No. 5789 against Miriam Valerya Hernandez (Respondent) before the Board of Pharmacy.
19 (Accusation attached as Exhibit A.)

20 2. On or about October 7, 2015, the Board of Pharmacy (Board) issued Pharmacy
21 Technician Registration No. TCH 151024 to Respondent. The Pharmacy Technician Registration was
22 in full force and effect at all times relevant to the charges brought in Accusation No. 5789 and will
23 expire on July 31, 2017, unless renewed.

24 3. On or about April 4, 2017, Respondent was served by Certified Mail copies of the
25 Accusation No. 5789, Statement to Respondent, Notice of Defense, Request for Discovery, and
26 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
27 address of record which, pursuant to Business and Professions Code section 4100, is required to be
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1 reported and maintained with the Board. Respondent's address of record was and is: 2489 Shield
2 Drive, Union City, CA 94587.

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

5 5. Government Code section 11506(c) states, in pertinent part:

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

11 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the
12 Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5789.

13 7. California Government Code section 11520(a) states, in pertinent part:

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

18 8. Pursuant to its authority under Government Code section 11520, the Board finds
19 Respondent is in default. The Board will take action without further hearing and, based on the
20 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking
21 official notice of all the investigatory reports, exhibits and statements contained on file at the Board's
22 offices regarding the allegations contained in Accusation No. 5789, finds that the charges and
23 allegations in Accusation No. 5789, are separately and severally, found to be true and correct by clear
24 and convincing evidence.

25 9. Taking official notice of its own internal records, pursuant to Business and Professions
26 Code section 125.3, it is hereby determined that the reasonable costs for Investigation and
27 Enforcement is \$1,140.00 as of May 9, 2017.

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1 DETERMINATION OF ISSUES

2 1. Based on the foregoing findings of fact, Respondent Miriam Valerya Hernandez has
3 subjected her Pharmacy Technician Registration No. TCH 151024 to discipline.

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

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

8 a. Violation of Business & Professions Code, section 4301, subd. (f) (Unprofessional
9 Conduct-Dishonest Act); and

10 b. Violation of Business & Professions Code, section 4301, subd. (l) (Unprofessional
11 Conduct-Conviction).

12 ORDER

13 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 151024, issued to
14 Respondent Miriam Valerya Hernandez, is revoked.

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

19 This Decision shall become effective at 5:00 p.m. on July 12, 2017.

20 It is so ORDERED on June 12, 2017.

21 BOARD OF PHARMACY
22 DEPARTMENT OF CONSUMER AFFAIRS
23 STATE OF CALIFORNIA

24 

25 By _____

26 Amy Gutierrez, Pharm.D.
27 Board President

27 SF2016900798/90796611.DOC
28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(MIRIAM VALERYA HERNANDEZ)

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

11 In the Matter of the Accusation Against:

Case No. 5789

12 **MIRIAM VALERYA HERNANDEZ**

A C C U S A T I O N

13 2489 Shield Drive
14 Union City, CA 94587

15 Pharmacy Technician Registration No. TCH
16 151024

17 Respondent.

18 Complainant alleges:

19 PARTIES

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

22 2. On or about October 7, 2015, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 151024 to Miriam Valerya Hernandez (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought in
25 this Accusation and will expire on July 31, 2017, unless renewed.

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28 ///

JURISDICTION

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

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

8 5. Section 4300 of the Code states, in relevant part:

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

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

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

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

16 "(4) Revoking his or her license.

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

19 ...

20 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
21 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
22 shall have all the powers granted therein. The action shall be final, except that the propriety of the
23 action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil
24 Procedure."

25 6. Section 4300.1 of the Code states:

26 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
27 operation of law or by order or decision of the board or a court of law, the placement of a license
28 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board

1 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
2 proceeding against, the licensee or to render a decision suspending or revoking the license."

3 STATUTES/REGULATIONS

4 7. Section 4301 of the Code states:

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

8 ...

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

12 ...

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

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

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

10 COST RECOVERY

11 9. Section 125.3 of the Code provides, in relevant part, that the Board may request the
12 administrative law judge to direct a licentiate found to have committed a violation or violations of
13 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
14 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
15 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
16 included in a stipulated settlement.

17 BACKGROUND

18 10. Nordstrom Rack Department Store (Nordstrom's) conducted an investigation of
19 Respondent, an employee of the store, and another employee for embezzling items from the
20 Nordstrom's store in Fremont, California. The Nordstrom investigation revealed that
21 Respondent, along with another employee, were involved in a scheme to steal money from the
22 store. Respondent and the other employee would "suspend" transactions for store merchandise
23 and allow each other to remove the items from the store even though they had not paid for them.
24 At a later point, defendants would return the merchandise to the store and would credit the return
25 back to their debit cards. On February 27, 2016, an investigator for Nordstrom's interviewed
26 Respondent regarding suspected embezzlements. During the interview, Respondent admitted to
27 engaging in various schemes with other employees to steal merchandise and money from
28 Nordstrom's. For example, Respondent admitted that she conducted a return of merchandise

1 transaction for an employee, even though he did not have any proof of purchase of the items and
2 he told her that he did not pay for the items. Respondent said the employee claimed he needed the
3 money. Further, Respondent admitted to Nordstrom's investigators that she took items from the
4 store without paying for them, and then returned them and received cash. The Nordstrom's
5 investigation found that Respondent was responsible for a loss to the store of \$13,549.05.
6 Ultimately, Nordstrom's terminated Respondent.

7 11. On or about February 27, 2016, officers from Fremont Police Department interviewed
8 Respondent. After being mirandized, Respondent admitted to using the mobile point of sale
9 machines to manipulate transactions to return embezzled property for money and hide the items
10 during regular transactions. Officers from the Fremont Police Department arrested Respondent.

11 12. On or about October 27, 2016, in *People v. Miriam Valerya Hernandez*, Case No.
12 260167-A, in Alameda County Superior Court, Respondent was convicted, based on her plea of
13 no contest, of one count of embezzlement (Pen. Code § 503), a misdemeanor. The court
14 sentenced Respondent to 36 months of probation with various conditions including, but not
15 limited to, paying \$3,549.00 in restitution to Nordstrom Rack.

16 **FIRST CAUSE FOR DISCIPLINE**
17 **(Unprofessional Conduct-Dishonest Act)**
(Bus. & Prof Code, § 4301, subd. (f))

18 13. Respondent has subjected her Pharmacy Technician Registration to disciplinary
19 action for unprofessional conduct in that in 2015 and 2016, she embezzled money from her
20 employer (Bus. & Prof. Code, § 4301, subd. (f)). The circumstances are explained in paragraphs
21 10 through 12, above.

22 **SECOND CAUSE FOR DISCIPLINE**
23 **(Unprofessional Conduct-Conviction)**
(Bus. & Prof. Code, § 4301, subd. (I))

24 14. Respondent has subjected her Pharmacy Technician Registration to disciplinary
25 action in that on or about October 27, 2016, she was convicted of a crime substantially related to
26 the qualifications, functions, or duties of a pharmacy technician (Bus. & Prof. Code, § 4301, subd.
27 (I)). Specifically, Respondent was convicted of embezzlement (Pen. Code, § 503), a
28 misdemeanor. The circumstances are explained in paragraph 12, above.

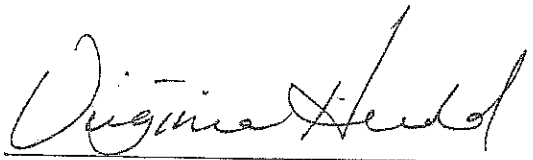
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 151024, issued to Miriam Valerya Hernandez;
2. Ordering Miriam Valerya Hernandez 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/22/17



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

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