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

In the Matter of the Accusation Against:

Case No. 5874

**ROBERT G. FINLEY**  
617 N. School St.  
Lodi, CA 95240

**DEFAULT DECISION AND ORDER**

**Pharmacy Technician Registration No. TCH  
30996**

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about November 28, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5874 against Robert G. Finley (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 5, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 30996 to Respondent. The Pharmacy Technician Registration expired on October 31, 2015, and was canceled on February 7, 2016 under Business and Professions Code section 4402(e).

///

1           3.    On or about January 10, 2017, Respondent was served by Certified and First Class  
2 Mail copies of Accusation No. 5874, Statement to Respondent, Notice of Defense, Request for  
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
5 is required to be reported and maintained with the Board. Respondent's address of record was  
6 and is:

7 617 N. School St.  
8 Lodi, CA 95240.

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 section  
11 124.

12           5.    On or about January 13, 2017, Respondent returned a signed Certified Mail receipt  
13 for the aforementioned Certified Mail documents.

14           6.    Government Code section 11506(c) 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  
17 parts of the accusation . . . not expressly admitted. Failure to file a notice of defense  
18 . . . shall constitute a waiver of respondent's right to a hearing, but the agency in its  
19 discretion 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 5874.

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

24               (a) If the respondent either fails to file a notice of defense . . . or to appear at  
25 the hearing, the agency may take action based upon the respondent's express  
26 admissions or upon other evidence and affidavits may be used as evidence without  
27 any notice to 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. 5874, finds that  
2 the charges and allegations in Accusation No. 5874, 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 are \$1,867.50 as of February 2, 2017.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Robert G. Finley has subjected  
9 his Pharmacy Technician Registration No. TCH 30996 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 4. Respondent violated Business and Professions Code section 4301(I), on the grounds  
15 of unprofessional conduct, in that Respondent has been convicted of a crime substantially related  
16 to the qualifications, functions, and duties of a pharmacy technician. The facts and circumstances  
17 are as follows.

18 a. On or about December 23, 2015, in *People v. Robert Gary Finley* (Superior Court of  
19 California, San Joaquin County, case no. LOD-CR-MI-2015-0015259), Respondent was  
20 convicted by the court, based upon his plea of guilty, of violating Health and Safety Code section  
21 11350(a) (possess narcotic controlled substance). The circumstances of the crime are as follows.

22 b. On or about November 12, 2015, Respondent was detained by the Lodi Police  
23 Department after he was observed riding down a street in the wrong direction on a bicycle.  
24 Respondent agreed to empty his pockets and when he did so, a plastic bag containing twenty pills  
25 fell out of his pocket. Respondent identified the pills as Percocet. Respondent explained that he  
26 used to work at a pharmacy and knew they were Schedule II controlled drugs. A further search  
27 ensued and two baggies with a white crystalline substance later identified as methamphetamine  
28 were found on Respondent.

1           5.     Respondent violated Business and Professions Code section 4301(j), on the grounds  
2 of unprofessional conduct, in that Respondent violated statutes regulating controlled substances  
3 and dangerous drugs, as follows.

4           a.     Respondent possessed Methamphetamine, a controlled substance, in violation of  
5 Health and Safety Code section 11377(a), as described with more particularity in paragraph 4(b),  
6 above.

7           b.     Respondent possessed Percocet, a controlled substance and a dangerous drug, when  
8 he did not have a lawful prescription for it, in violation of Health and Safety Code section  
9 11350(a), as described with more particularity in paragraph 4(b), above.

10          6.     Respondent violated Business and Professions Code section 4301(o), on the grounds  
11 of unprofessional conduct, in that on or about November 12, 2015, Respondent violated or  
12 attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Business  
13 and Professions Code section 4000, et seq.), as follows.

14          a.     Respondent possessed Percocet without a lawful prescription from a physician,  
15 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Business and  
16 Professions Code section 4060, as described with more particularity in paragraph 4(b), above.

17          b.     Respondent possessed Methamphetamine without a lawful prescription from a  
18 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of  
19 Business and Professions Code section 4060, as described with more particularity in paragraph  
20 4(b), above.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 30996, heretofore issued to Respondent Robert G. Finley, 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 at 5:00 p.m. on February 28, 2017.

It is so ORDERED on March 30, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

12577588.DOC  
SA2016102670

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

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(ROBERT G. FINLEY)

1 KAMALA D. HARRIS  
Attorney General of California  
2 KENT D. HARRIS  
Supervising Deputy Attorney General  
3 PHILLIP L. ARTHUR  
Deputy Attorney General  
4 State Bar No. 238339  
1300 I Street, Suite 125  
5 P.O. Box 944255  
Sacramento, CA 94244-2550  
6 Telephone: (916) 322-0032  
Facsimile: (916) 327-8643  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5874

12 **ROBERT G. FINLEY**  
617 N. School St.  
13 Lodi, CA 95240

**ACCUSATION**

14 **Pharmacy Technician Registration No. TCH**  
15 **30996**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

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

21 **Pharmacy Technician Registration**

22 2. On or about October 5, 1999, the Board issued Pharmacy Technician Registration  
23 Number TCH 30996 to Robert G. Finley ("Respondent"). The Pharmacy Technician Registration  
24 expired on October 31, 2015, and has not been renewed.

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26 ///

27 ///

1 JURISDICTION

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

5 4. Business and Professions Code ("Code") section 4300 states, in pertinent part:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

16 5. Code section 4300.1 states:

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

23 STATUTORY PROVISIONS

24 6. Code section 4301 states, in pertinent part:

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

...

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

...



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

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

22 ...  
23 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
24 abetting the violation of or conspiring to violate any provision or term of this chapter  
25 or of the applicable federal and state laws and regulations governing pharmacy,  
26 including regulations established by the board or by any other state or federal  
27 regulatory agency. . . .

28 7. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for  
self-use in humans or animals, 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.

(b) Any device that bears the statement: "Caution: federal law restricts this  
device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import,  
the blank to be filled in with the designation of the practitioner licensed to use or  
order use of the device.

(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.

8. Code section 4060 states, in pertinent part:

A person shall not possess any controlled substance, except that furnished to a  
person upon the prescription of a physician, dentist, podiatrist, optometrist,  
veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant  
to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a  
nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to

1 Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist  
2 pursuant to Section 4052.1, 4052.2, or 4052.6. . . .

3 9. Health and Safety ("H&S") Code section 11170 states, "No person shall prescribe,  
4 administer, or furnish a controlled substance for himself."

5 10. H&S Code section 11350(a) states:

6 Except as otherwise provided in this division, every person who possesses (1)  
7 any controlled substance specified in subdivision (b) or (c), or paragraph (1) of  
8 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of  
9 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section  
10 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled  
11 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon  
12 the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to  
13 practice in this state, shall be punished by imprisonment pursuant to subdivision (h)  
14 of Section 1170 of the Penal Code.

15 11. H&S Code section 11377(a) states:

16 Except as authorized by law and as otherwise provided in subdivision (b) or  
17 Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of  
18 Division 2 of the Business and Professions Code, every person who possesses any  
19 controlled substance which is (1) classified in Schedule III, IV, or V, and which is not  
20 a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs  
21 (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of  
22 subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision  
23 (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055,  
24 unless upon the prescription of a physician, dentist, podiatrist, or veterinarian,  
25 licensed to practice in this state, shall be punished by imprisonment in a county jail  
26 for a period of not more than one year or pursuant to subdivision (h) of Section 1170  
27 of the Penal Code.

### 28 COST RECOVERY

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

### DRUG

13. *Methamphetamine* is a schedule II controlled substance as designated by H&S Code  
section 11055(d)(2).

///

1 14. *Percocet* is a brand of oxycodone, a Schedule II controlled substance as designated by  
2 H&S Code section 11055(b)(1).

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Criminal Conviction)

5 15. Respondent is subject to disciplinary action pursuant to Code section 4301(l), on the  
6 grounds of unprofessional conduct, in that Respondent has been convicted of a crime  
7 substantially related to the qualifications, functions, and duties of a pharmacy technician. The  
8 facts and circumstances are as follows:

9 16. On or about December 23, 2015, in *People v. Robert Gary Finley* (Superior Court of  
10 California, San Joaquin County, case no. LOD-CR-MI-2015-0015259), Respondent was  
11 convicted by the court, based upon his plea of guilty, of violating Health and Safety Code section  
12 11350(a) (possess narcotic controlled substance). Respondent was ordered to attend and  
13 complete the Deferred Entry of Judgment program by December 11, 2018 and to pay a restitution  
14 fine. The circumstances of the crime are as follows:

15 17. On or about November 12, 2015, Respondent was detained by the Lodi Police  
16 Department after he was observed riding down a street in the wrong direction on a bicycle.  
17 Respondent agreed to empty his pockets and when he did so a plastic bag containing 20 pills fell  
18 out of his pocket. Respondent identified the pills as Percocet. Respondent explained that he used  
19 to work at a pharmacy and knew they were Schedule II controlled drugs. A further search ensued  
20 and two baggies with a white crystalline substance later identified as methamphetamine were  
21 found on Respondent.

22 **SECOND CAUSE FOR DISCIPLINE**

23 (Violation of State Laws Regulating Controlled Substances)

24 18. Respondent is subject to disciplinary action pursuant to Code section 4301(j), on the  
25 grounds of unprofessional conduct, in that Respondent violated statutes regulating controlled  
26 substances and dangerous drugs, as follows:

27 a. Respondent possessed methamphetamine, a controlled substance, in violation of H&S  
28 Code section 11377(a), as described with more particularity in paragraph 17, above.

1 b. Respondent possessed Percocet, a controlled substance and a dangerous drug, when  
2 he did not have a lawful prescription for it, in violation of H&S Code section 11350(a), as  
3 described with more particularity in paragraph 17, above.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Violation of the Pharmacy Law)

6 19. Respondent is subject to disciplinary action pursuant to Code section 4301(o), on the  
7 grounds of unprofessional conduct, in that on or about November 12, 2015, Respondent violated  
8 or attempted to violate, directly or indirectly, a provision or term of the Pharmacy Law (Code  
9 section 4000, et seq.), as follows:

10 a. Respondent possessed Percocet without a lawful prescription from a physician,  
11 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of Code section  
12 4060, as described with more particularity in paragraph 17, above..

13 b. Respondent possessed Methamphetamine without a lawful prescription from a  
14 physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, in violation of  
15 Code section 4060, as described with more particularity in paragraph 17, above.

16 **PRAYER**

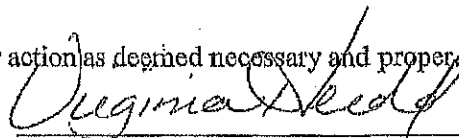
17 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,  
18 and that following the hearing, the Board of Pharmacy issue a decision:

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 30996,  
20 issued to Robert G. Finley;

21 2. Ordering Robert G. Finley to pay the Board of Pharmacy the reasonable costs of  
22 investigation and enforcement of this case, pursuant to Business and Professions Code section  
23 125.3; and,

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

25 DATED: 11/28/16



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