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

In the Matter of the Accusation Against:

ALICIA ANDREA OSUNA
40778 Boyer Avenue
Hemet, CA 92544
Pharmacist Technician Registration No.
TCH 137137

Respondent.

Case No. 5876

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 30, 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. 5876 against Alicia Andrea Osuna (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about December 31, 2013, the Board of Pharmacy (Board) issued Pharmacist Technician Registration No. TCH 137137 to Respondent. The Pharmacist Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5876 and will expire on September 30, 2017, unless renewed.

1 3. On or about August 16, 2016, Respondent was served by Certified Mail copies of the
2 Accusation No. 5876, Statement to Respondent, Notice of Defense, Request for Discovery, and
3 Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's
4 address of record which, pursuant to Business and Professions Code section 4100, is required to
5 be reported and maintained with the Board. Respondent's address of record was and is:
6 40778 Boyer Avenue, Hemet, CA 92544.

7 4. Service of the Accusation was effective as a matter of law under the provisions of
8 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
9 124.

10 5. On or about September 12, 2017, Respondent signed and returned a Notice of
11 Defense, requesting a hearing in this matter.

12 6. On January 27, 2017, Respondent served the Board with her Withdrawal of Notice of
13 Defense/Request for Hearing waving her right to an administrative hearing in this matter.

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

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

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

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

27 9. California Code of Regulations title 1, section 1014, provides Respondents with the
28 right to withdraw a Notice of Defense as follows:

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(c) A party who withdraws a notice of defense, a request for Hearing, or an asserted special defense shall immediately notify OAH and all other parties.

(d) When a party withdraws a notice of defense or a request for Hearing, the agency shall promptly notify OAH of the agency's decision either to proceed with the Hearing as a default or request that the scheduled Hearing be taken off calendar as a result of the party's withdrawal of the notice of defense or request for Hearing. If the agency's request to take the Hearing off calendar is made before the scheduled Hearing, the agency shall file the request in writing and include the name of the party who has withdrawn the notice of defense or request for Hearing.

10. 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. 5876, finds that the charges and allegations in Accusation No. 5876, are separately and severally, found to be true and correct by clear and convincing evidence.

11. 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 is \$1,620.00 as of February 10, 2017.

DETERMINATION OF ISSUES

- 1. Based on the foregoing findings of fact, Respondent Alicia Andrea Osuna has subjected her Pharmacist Technician Registration No. TCH 137137 to discipline.
- 2. The agency has jurisdiction to adjudicate this case by default.
- 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist 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.:

1 a. Violation of Business and Professions Code section 4301, subsection (l), conviction
2 of a crime substantially related to the qualifications, functions, and duties of a licensee.

3 b. Violation of Business and Professions Code section 4301, subsection (f), commission
4 of acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

5 ORDER

6 IT IS SO ORDERED that Pharmacist Technician Registration No. TCH 137137, heretofore
7 issued to Respondent Alicia Andrea Osuna, 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 19, 2017.

13 It is so ORDERED on March 20, 2017.

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

18 

19
20 By _____

Amy Gutierrez, Pharm.D.
Board President

21
22 81589093.DOC
23 DOJ Matter ID:SD2016701560

24 Attachment:
25 Exhibit A: Accusation
26
27
28

Exhibit A

Accusation

(ALICIA ANDREA OSUNA)

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2 LINDA K. SCHNEIDER
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Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 5876

13 **ALICIA ANDREA OSUNA**
14 **40778 Boyer Avenue**
15 **Hemet, CA 92544**

ACCUSATION

16 **Pharmacist Technician Registration No.**
17 **TCH 137137**

Respondent.

18 Complainant alleges:

19 **PARTIES**

- 20 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.
- 21 2. On or about December 31, 2013, the Board of Pharmacy issued Pharmacist
22 Technician Registration Number TCH 137137 to Alicia Andrea Osuna (Respondent). The
23 Pharmacist Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on September 30, 2017, unless renewed.

25 **JURISDICTION**

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

4 5. Section **4300** of the Code provides that every license issued by the Board may be
5 suspended or revoked.

6 6. Section **4300.1** of the Code states:

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

12 **STATUTORY AND REGULATORY PROVISIONS**

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

16 ...

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

20 ...

21 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
22 of a licensee under this chapter. The record of conviction of a violation of Chapter 13
23 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
24 substances or of a violation of the statutes of this state regulating controlled substances or
25 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
26 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
27 The board may inquire into the circumstances surrounding the commission of the crime, in order
28 to fix the degree of discipline or, in the case of a conviction not involving controlled substances

1 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
2 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
3 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
4 of this provision. The board may take action when the time for appeal has elapsed, or the
5 judgment of conviction has been affirmed on appeal or when an order granting probation is made
6 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
7 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
8 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
9 indictment.

10 ...

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

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

18 **COST RECOVERY**

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

23 **FIRST CAUSE FOR DISCIPLINE**

24 (Criminal Conviction)

25 10. Respondent is subject to disciplinary action under Code section 4301, subsection
26 (l), in that she has been convicted of crimes substantially related to the qualifications, functions,
27 and duties of a licensee. The circumstances are as follows:

28 11. On or about April 6, 2016, in San Bernardino Superior Court case number

1 FVII502701-1, Respondent was convicted of having violated California Penal Code section
2 487(a) (grand theft), a felony. The conviction was based on conduct which occurred on or about
3 November 6, 2015, during which Respondent and co-conspirators went to various Kohl's stores
4 and stole items amounting in value to almost \$5,000.00.

5 **SECOND CAUSE FOR DISCIPLINE**

6 (Acts of Dishonesty)

7 12. Respondent is subject to disciplinary action under Code section 4301, subsection (f), in that
8 she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth
9 above in paragraph 11.

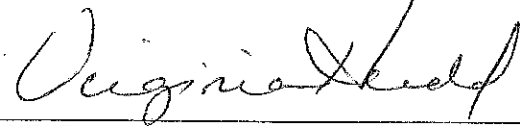
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacist Technician Registration Number TCH 137137,
14 issued to Alicia Andrea Osuna;
- 15 2. Ordering Alicia Andrea Osuna to pay the Board of Pharmacy the reasonable costs of
16 the investigation and enforcement of this case, pursuant to Business and Professions Code section
17 125.3;
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: _____

8/16/16



21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant