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

10 In the Matter of the Accusation Against:

Case No. 4199

11 **VICTOR MONTALVO**

12 15509 S. Washington Ave
13 Compton, CA 90221

DEFAULT DECISION AND ORDER

14 Pharmacy Technician Registration No. TCH
15 35659

[Gov. Code, §11520]

16 Respondent.

17 **FINDINGS OF FACT**

18 1. On or about June 15, 2012, Complainant Virginia Herold, in her official capacity as
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
20 Accusation No. 4199 against Victor Montalvo ("Respondent") before the Board of Pharmacy.
(Accusation attached as Exhibit A.)

21 2. On or about January 4, 2001, the Board of Pharmacy ("Board") issued Pharmacy
22 Technician Registration No. TCH 35659 to Respondent. The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 4199.
24 The Pharmacy Technician Registration expired on May 31, 2012, and has not been renewed.
25 However, this lapse in licensure, pursuant to Business and Professions Code section 118(b) does
26 not deprive the Board of its authority to institute or continue this disciplinary proceeding.

27 3. On or about July 9, 2012, Respondent was served by Certified and First Class Mail
28 copies of the Accusation No. 4199, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is:

5 15509 S. Washington Ave
6 Compton, CA 90221.

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. As of August 16, 2012, no documents have been returned as undeliverable. My
11 office received the signed Certified Mail receipt for the July 9, 2012, pleading documents.

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

13 (c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts
15 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.

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
20 4199.

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

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

26 9. Pursuant to its authority under Government Code section 11520, the Board finds
27 Respondent is in default. The Board will take action without further hearing and, based on the
28 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. 4199, finds that

1 the charges and allegations in Accusation No. 4199, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$1,242.50 as of August 16, 2012.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Victor Montalvo has subjected
8 his Pharmacy Technician Registration No. TCH 35659 to discipline.

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

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

13 a. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
14 section 490 of the Code in conjunction with California Code of Regulations, title 16, section 1770
15 in that on or about June 1, 2011, Respondent pled guilty to and was convicted of one felony count
16 of violating Health and Safety Code section 11351.5 [possession for sale of cocaine base] in the
17 criminal proceeding entitled *The People of the State of California v. Victor Montalvo* (Super Ct.
18 of California County of Los Angeles, 2011, Case No. TA116770), a crime substantially related to
19 the qualifications, functions and duties of a pharmacy technician. The conviction and the
20 circumstances underlying the conviction are described in more particularity in Accusation No.
21 4199, hereby incorporated by reference.

22 b. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
23 Code in that Respondent violated California statutes regulating controlled substances when he
24 possessed rock cocaine for sale. Respondent was criminally convicted of violating Health and
25 Safety Code section 11351.5 [possession for sale of cocaine base]. The violation is described in
26 more particularity in Accusation No. 4199, hereby incorporated by reference.

27 c. Respondent is subject to disciplinary action under section 4301, subdivision (p) as
28 defined in section 480, subdivision (a)(1) of the Code in conjunction with California Code of

1 Regulations, title 16, section 1770 in that Respondent committed acts which would warrant the
2 denial of a license when he was convicted of a crime substantially related to the qualifications,
3 functions and duties of a pharmacy technician. The acts are described in more particularity in
4 Accusation No. 4199, hereby incorporated by reference.

5 d. Respondent is subject to disciplinary action under section 4301, subdivision (o) in
6 that Respondent violated provisions of the Pharmacy Law when he was convicted of substantially
7 related crimes, violated California statutes regulating controlled substances and committed acts
8 warranting denial of licensure. The violations are described in more particularity in Accusation
9 No. 4199, hereby incorporated by reference.

10 **ORDER**

11 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 35659, heretofore
12 issued to Respondent Victor Montalvo, is revoked.

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

17 This Decision shall become effective on October 15, 2012.

18 It is so ORDERED ON September 14, 2012

19 BOARD OF PHARMACY
20 DEPARTMENT OF CONSUMER AFFAIRS
21 STATE OF CALIFORNIA

22 
23 By _____
24 STANLEY C. WEISSER
25 Board President

26 51149801.DOC
27 DOJ Matter ID:LA2011504887

28 Attachment:
Exhibit A: Accusation No. 4199

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 GLORIA A. BARRIOS
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Deputy Attorney General
4 State Bar No. 272953
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 4199

13 **VICTOR MONTALVO**

14 15509 S. Washington Ave
Compton, CA 90221

A C C U S A T I O N

15 Pharmacy Technician Registration No. TCH
35659

16 Respondent.

17
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 January 4, 2001, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 35659 to Victor Montalvo ("Respondent"). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on May 31, 2012, unless renewed.

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JURISDICTION AND STATUTORY PROVISIONS

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

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

5. Section 4300 of the Code states:

(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 has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

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

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.

1 (7) Compliance with laws and regulations governing the practice of
pharmacy.

2 (d) The board may initiate disciplinary proceedings to revoke or suspend
3 any probationary certificate of licensure for any violation of the terms and conditions
4 of probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

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

6. Section 4301 of the Code states in pertinent part:

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

11 ...

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

14 ...

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

...
25

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

(p) Actions or conduct that would have warranted denial of a license.”

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7. Section 490 of the Code states:

“(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.”

8. Section 493 of the Code states:

“Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and ‘registration.’”

9. Section 480 of the Code states in pertinent part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

1 (1) Been convicted of a crime. A conviction within the meaning of this
2 section means a plea or verdict of guilty or a conviction following a plea of nolo
3 contendere. Any action that a board is permitted to take following the establishment
4 of a conviction may be taken when the time for appeal has elapsed, or the judgment
5 of conviction has been affirmed on appeal, or when an order granting probation is
6 made suspending the imposition of sentence, irrespective of a subsequent order under
7 the provisions of Section 1203.4 of the Penal Code.”

8 **REGULATORY PROVISION**

9 10. California Code of Regulations, title 16, section 1770, states:

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

18 **DRUG DEFINITION**

19 11. Cocaine, and any cocaine base, is a Schedule I controlled substance, as designated in
20 Health and Safety Code section 11054(f)(1) and a Schedule II controlled substance, as designated
21 in Health and Safety Code section 11055(b)(6).

22 **COST RECOVERY**

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

27 **FIRST CAUSE FOR DISCIPLINE**

28 **(Substantially Related Criminal Conviction)**

13. Respondent is subject to disciplinary action under section 4301, subdivision (l) and
section 490 of the Code in conjunction with California Code of Regulations, title 16, section 1770
in that Respondent was convicted of a crime substantially related to the qualifications, functions
and duties of a pharmacy technician as follows:

14. On or about June 1, 2011, Respondent pled guilty to and was convicted of one felony
count of violating Health and Safety Code section 11351.5 [possession for sale of cocaine base]
in the criminal proceeding entitled *The People of the State of California v. Victor Montalvo*

1 (Super Ct. of California County of Los Angeles, 2011, Case No. TA116770). As part of his plea,
2 Respondent admitted a violation of Penal Code section 12022(a)(1) [principal personally armed].
3 The court ordered Respondent to serve three (3) days in Los Angeles County Jail and placed
4 Respondent on formal probation for a period of thirty-six (36) months, with terms and conditions.
5 The circumstances underlying the conviction are as follows:

6 15. On or about January 13, 2011, Los Angeles Sheriff's Department Officers
7 investigated an incident where shots were fired on Respondent's residence. While conducting a
8 protective sweep of the residence Officers found a loaded shotgun, a rifle, a silver revolver and
9 eleven (11) individually packaged quarter ounce pieces of suspected rock cocaine. Respondent
10 admitted to selling rock cocaine and to possession of the firearms.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Violation of Statutes Regulating Controlled Substances)**

13 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) of the
14 Code in that Respondent violated California statutes reguating controlled substances when he
15 possessed rock cocaine for sale. Respondent was criminally convicted of violating Health and
16 Safety Code section 11351.5 [possession for sale of cocaine base]. The violation of California
17 statutes regulating controlled substances and the subsequent criminal conviction are described in
18 paragraphs 13 through 15 above, inclusive and herein incorporeated by reference.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Acts Warranting Denial of Licensure)**

21 17. Respondent is subject to disciplinary action under section 4301, subdivision (p) as
22 defined in section 480, subdivision (a)(1) of the Code in conjunction with California Code of
23 Regulations, title 16, section 1770 in that Respondent committed acts which would warrant the
24 denial of a license when he was convicted of a crime substantially related to the qualifications,
25 functions and duties of a pharmacy technician. The conviction is described in more particularity
26 in paragraphs 13 through 15 above, inclusive and herein incorporeated by reference.

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FOURTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Law)

18. Respondent is subject to disciplinary action under section 4301, subdivision (o) in that Respondent violated provisions of the Pharmacy Law when he was convicted of substantially related crimes, violated California statutes regulating controlled substances and committed acts warranting denial of licensure. The violations are described in more particularity in paragraphs 13 through 17 above, inclusive and herein incorporated by reference.

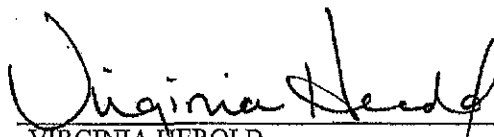
PRAYER

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:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 35659, issued to Victor Montalvo;
2. Ordering Victor Montalvo 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;
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

6/15/12



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

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