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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. 3759

10 **JENNY JOY DIGARDI**
11 **10222 El Dorado Way**
12 **Kelseyville, CA 95451**
13 **Pharmacy Technician License No. TCH**
14 **44340**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

15 FINDINGS OF FACT

16 1. On or about May 27, 2011, Complainant Virginia Herold, in her official capacity as
17 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
18 Accusation No. 3759 against Jenny Joy Digardi (Respondent) before the Board of Pharmacy.
19 (Accusation attached as Exhibit A.)

20 2. On or about September 27, 2002, the Board of Pharmacy (Board) issued Pharmacy
21 Technician License No. TCH 44340 to Respondent. The Pharmacy Technician License was in
22 full force and effect at all times relevant to the charges brought in Accusation No. 3759 and will
23 expire on October 31, 2012, unless renewed.

24 3. On or about June 6, 2011, Respondent was served by Certified Mail copies of the
25 Accusation No. 3759, 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
28 be reported and maintained with the Board, which was and is:

10222 El Dorado Way
Kelseyville, CA 95451.

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

- 4 a. Violation of Sections 490 and 4301(l) of the California Business and Professions
5 Code ("Code"), and Title 16, Section 1770 of California Code of Regulations, in that
6 Respondent was convicted of certain criminal offenses. Specifically, Respondent
7 was convicted of violating California Penal Code Sections 148.9(a) (falsely
8 identifying to a police officer) and 496d(a) (possession of a stolen automobile), and
9 California Health & Safety Code Section 11377(a) (possession of
10 methamphetamine).
- 11 b. Violation of Section 4301(j) of the Code in that Respondent violated a statute
12 regulating controlled substances.
- 13 c. Violation of Section 4301(f) of the Code in that Respondent committed an act
14 involving dishonesty.

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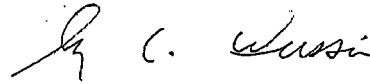
ORDER

IT IS ORDERED that Pharmacy Technician License No. TCH 44340, heretofore issued to Respondent Jenny Joy Digardi, 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 on November 23, 2011.

It is so ORDERED October 24, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

20492353.DOC
DOJ Matter ID: SF2011201126
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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2 FRANK H. PACOE
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Attorneys for Complainant
7

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

10 In the Matter of the Accusation Against:

Case No. 3759

11 **JENNY JOY DIGARDI**
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13 **Kelseyville, CA 95451**
Pharmacy Technician License No. TCH
14 **44340**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

- 18 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
19 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
20 2. On or about September 27, 2002, the Board of Pharmacy issued Pharmacy Technician
21 License Number TCH 44340 to Jenny Joy Digardi (Respondent). The Pharmacy Technician
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on October 31, 2012, unless renewed.
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1 JURISDICTION

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 4300 of the Code states:

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, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 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 its
15 discretion may deem proper.

16 ". . . .

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

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

26 STATUTORY AND REGULATORY PROVISIONS

27 6. Section 4301 of the Code states:
28

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

4 ". . . .

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

8 ". . . .

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

11 ". . . .

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

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7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. California Code of Regulations, Title 16, Section 1770, states:

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

METHAMPHETAMINE

9. Health & Safety Code Section 11055(d)(2) provides that Methamphetamine is a Schedule II drug.

10. Health & Safety Code Section 11377(a) makes illegal the possession of Schedule II drugs without a prescription.

COSTS

11. Section 125.3 of the Code states, 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 the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions)

12. Respondent is subject to disciplinary action under Sections 490 and 4301(l) of the Code and Title 16, Section 1770 of California Code of Regulations, in the Respondent was convicted of certain criminal offenses. The circumstances are as follows:

1 13. On or about March 4, 2010, in the Superior Court of California for the County of
2 Sonoma, Respondent pled guilty to and was convicted of violating California Penal Code Section
3 148.9(a) (falsely identifying to a police officer), a misdemeanor. The circumstances were that on
4 or around August 18, 2009, police arrested Respondent for her involvement in an ID theft
5 conspiracy. When confronted, Respondent lied to them about the identification of a co-
6 conspirator.

7 14. On or about March 4, 2010, in the Superior Court of California for the County of
8 Sonoma, Respondent pled no contest to and was convicted of violating California Penal Code
9 Section 496d(a) (possession of a stolen automobile), a felony. The circumstances were that in or
10 around November of 2009, Respondent was arrested driving a stolen 2006 Lexus.

11 15. On or about March 4, 2010, in the Superior Court of California for the County of
12 Sonoma, Respondent pled no contest to and was convicted of violating California Health &
13 Safety Code Section 11377(a) (possession of methamphetamine), a felony. The circumstances
14 were that in or around February 20, 2010, Respondent was arrested with methamphetamine and a
15 hypodermic needle.

16 **SECOND CAUSE FOR DISCIPLINE**

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

18 16. Respondent is subject to disciplinary action under Section 4301(j) in that Respondent
19 violated a statute regulating controlled substances. The circumstances are as follows:

20 17. As described above in the First Cause for Discipline, Respondent violated California
21 Health & Safety Code Section 11377(a) (possession of methamphetamine) on or around February
22 20, 2010.

23 18. Respondent violated the same law on at least two other occasions, both of which led
24 to her arrest. Specifically:

25 (A) on or around November 3, 2009, Respondent possessed methamphetamine — along
26 with hypodermic needles — and was arrested on that basis.

27 (B) on or around December 11, 2009, Respondent possessed methamphetamine — along
28 with hypodermic needles — and was arrested on that basis.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Act Involving Dishonesty)**

3 19. Respondent is subject to disciplinary action under Sections 4301(f) of the Code in
4 that Respondent committed an act involving dishonesty on August 18, 2009. The circumstances
5 are described above in the First Cause for Discipline.

6 **PRAYER**

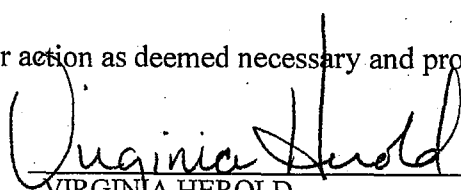
7 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
8 and that following the hearing, the Board of Pharmacy issue a decision:

9 1. Revoking or suspending Pharmacy Technician License Number TCH 44340, issued
10 to Jenny Joy Digardi;

11 2. Ordering Jenny Joy Digardi to pay the Board of Pharmacy the reasonable costs of the
12 investigation and enforcement of this case, pursuant to Business and Professions Code section
13 125.3;

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

15 DATED: 5/27/11

16 
17 VIRGINIA HEROLD
18 Executive Officer
19 Board of Pharmacy
20 Department of Consumer Affairs
21 State of California
22 Complainant

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