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

In the Matter of the Accusation Against: **OSVALDO GUTIERREZ** **2197 Polar Avenue** **East Palo Alto, CA 94303** **Pharmacy Technician License No. TCH 97983** Respondent.	Case No. 4061 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 6, 2011, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4061 against Osvaldo Gutierrez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 11, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician License No. TCH 97983 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought in Accusation No. 4061 and will expire on May 31, 2013, unless renewed.

3. On or about July 12, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4061, Statement to Respondent, Notice of Defense, and Request for

Discovery at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board, which was and is:

2197 Polar Avenue
East Palo Alto, CA 94303.

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

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

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

6. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 4061.

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

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

8. 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. 4061, finds that the charges and allegations in Accusation No. 4061, are separately and severally, found to be true and correct by clear and convincing evidence.

9. 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 $2072.50 as of August 11, 2011.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Osvaldo Gutierrez has subjected his Pharmacy Technician License No. TCH 97983 to discipline.

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

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician License 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:

a. Respondent is subject to disciplinary action under section 4301(l) of the code in that Respondent was convicted of crimes that are substantially related to the duties, functions, and qualifications of a pharmacy technician.

b. Respondent is subject to disciplinary action under section 4301(j) of the code in that Respondent violated a California statute regulating controlled substances.

ORDER

IT IS SO ORDERED that Pharmacy Technician License No. TCH 97983, heretofore issued to Respondent Osvaldo Gutierrez, 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

default decision_LIC.rtf
DOJ Matter ID:SF2011201550
Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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

In the Matter of the Accusation Against: **OSVALDO GUTIERREZ** 2197 Polar Avenue East Palo Alto, CA 94303 **Pharmacy Technician License No. TCH 97983** Respondent.	Case No. 4061 **ACCUSATION**

Complainant alleges:

PARTIES

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.

2. On or about February 11, 2010, the Board of Pharmacy issued Pharmacy Technician License Number TCH 97983 to Osvaldo Gutierrez (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2013, unless renewed.

JURISDICTION

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 unless otherwise indicated.

4. Section 4300 of the Code states:

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

5. Section 4301 of the Code states:

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

. . .

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

. . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The 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. . ."

6. 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."

7. 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.

DRUGS

8. Cocaine is a Schedule Schedule II controlled substance as designated by Health and Safety Code 11055(b)(6), and a dangerous drug as designated by Business and Professions Code section 4022. It is a narcotic drug.

9. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FIRST CAUSE FOR DISCIPLINE

(Conviction)

10. Respondent is subject to disciplinary action under section 4301(l) of the code in that Respondent was convicted of crimes that are substantially related to the duties, functions, and qualifications of a pharmacy technician. On or about March 2, 2011, in San Mateo County Superior Court Case No. SF373188 / SC072938, Respondent was convicted of violating:

a) Health and Safety Code section 11351, possession of a controlled substance (cocaine) for the purpose of sale. Respondent was also convicted of possessing a firearm during the commission of this crime in violation of Penal Code section 12022(c).

b) Health and Safety Code section 11358, possession of a controlled substance (methamphetamine).

SECOND CAUSE FOR DISCIPLINE

(Violation of Drug Laws)

11. Respondent is subject to disciplinary action under section 4301(j) of the code in that Respondent violated a California statute regulating controlled substances. On or about October 13, 2010, Respondent possessed a controlled substance (cocaine) for the purpose of sale in violation of Health and Safety Code Section 11351. On or about October 13, 2010, Respondent possessed a controlled substance (methamphetamine) in violation of Health and Safety Code Section 11358.

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 License Number TCH 97983, issued to Osvaldo Gutierrez;

2. Ordering Osvaldo Gutierrez 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 is deemed necessary and proper.

DATED: 7/6/11

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

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