

1
2
3
4
5
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. 4084

11 **MARICRISS REGINA AGTANE**
12 **4968 Antioch Loop**
13 **Union City, CA 94587**
14 **Pharmacy Technician Registration No. TCH**
15 **57222**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

16 FINDINGS OF FACT

17 1. On or about November 2, 2011, Complainant Virginia Herold, in her official capacity
18 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
19 Accusation No. 4084 against Maricriss Regina Agtane (Respondent) before the Board of
20 Pharmacy. (Accusation attached as Exhibit A.)

21 2. On or about July 2, 2004, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 57222 to Respondent. The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought in Accusation No. 4084
24 and expired on September 30, 2011. This lapse in licensure, however, does not deprive the Board
25 of its authority to institute or continue this disciplinary proceeding.

26 3. On or about December 13, 2011, Respondent was served by certified and regular mail
27 copies of the Accusation No. 4084, Statement to Respondent, Notice of Defense, Request for
28 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) 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:

1 1276 Quincy Drive #6
San Jose, CA 95132.

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

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

6 (c) The respondent shall be entitled to a hearing on the merits if the respondent
7 files a notice of defense, and the notice shall be deemed a specific denial of all parts
8 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.

9 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
10 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4084.

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

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

15 8. Pursuant to its authority under Government Code section 11520, the Board finds
16 Respondent is in default. The Board will take action without further hearing and, based on the
17 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
18 taking official notice of all the investigatory reports, exhibits and statements contained therein on
19 file at the Board's offices regarding the allegations contained in Accusation No. 4084, finds that
20 the charges and allegations in Accusation No. 4084, are separately and severally, found to be true
21 and correct by clear and convincing evidence.

22 9. Taking official notice of its own internal records, pursuant to Business and
23 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
24 and Enforcement is \$1,327.50 as of February 3, 2012.

25 DETERMINATION OF ISSUES

26 1. Based on the foregoing findings of fact, Respondent Maricriss Regina Agtane has
27 subjected her Pharmacy Technician Registration No. TCH 57222 to discipline.

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

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 BRETT A. KINGSBURY
Deputy Attorney General
4 State Bar No. 243744
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1192
6 Facsimile: (415) 703-5480
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:
11 **MARICRISS REGINA AGTANE**
12 **1276 Quincy Drive #6**
13 **San Jose, CA 95132**
Pharmacy Technician Registration No. TCH
14 **57222**
15 Respondent.

Case No. 4084

A C C U S A T I O N

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 July 2, 2004, the Board of Pharmacy issued Pharmacy Technician
21 Registration Number TCH 57222 to Maricriss Regina Agtane (Respondent). The Pharmacy
22 Technician Registration was in full force and effect at all times relevant to the charges brought
23 herein and will expire on September 30, 2011, unless renewed.

24 ///
25 ///
26 ///
27 ///
28 ///

JURISDICTION

1
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 of the Code states:

23 "(a) The withdrawal of an application for a license after it has been filed with a board in the
24 department shall not, unless the board has consented in writing to such withdrawal, deprive the
25 board of its authority to institute or continue a proceeding against the applicant for the denial of
26 the license upon any ground provided by law or to enter an order denying the license upon any
27 such ground.

28

1 8. Section 4022 of the Code states

2 "Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in
3 humans or animals, and includes the following:

4 "(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without
5 prescription," "Rx only," or words of similar import.

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

9 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
10 prescription or furnished pursuant to Section 4006."

11 9. Section 4060 of the Code states:

12 "No person shall possess any controlled substance, except that furnished to a person upon
13 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
14 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
15 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
16 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
17 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
18 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
19 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
20 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
21 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
22 labeled with the name and address of the supplier or producer.

23 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
24 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
25 devices."

26 10. California Health and Safety Code § 11377(a) provides:

27 "(a) Except as authorized by law and as otherwise provided in subdivision (b) or Section
28 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the

1 Business and Professions Code, every person who possesses any controlled substance which is
2 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in
3 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),
4 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)
5 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section
6 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to
7 practice in this state, shall be punished by imprisonment in a county jail for a period of
8 not more than one year or in the state prison.”

9 11. California Health and Safety Code § 11550(a) provides:

10 “No person shall use, or be under the influence of any controlled substance which is (1)
11 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
12 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified
13 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
14 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
15 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
16 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of
17 the defense to show that it comes within the exception. Any person convicted of violating this
18 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90
19 days or more than one year in a county jail. The court may place a person convicted under this
20 subdivision on probation for a period not to exceed five years and, except as provided in
21 subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that
22 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision
23 (c), in no event shall the court have the power to absolve a person who violates this subdivision
24 from the obligation of spending at least 90 days in confinement in a county jail.”

25 **DRUGS**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COSTS

13. 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

(Violation of Statute Regulating Controlled Substances)

14. Respondent is subject to disciplinary action under section 4301(j) of the Code, as further explained in sections 4021 and 4022 of the Code, in that Respondent violated the following statutes regulating controlled substances and dangerous drugs:

15. Business and Professions Code § 4060. The circumstances were that on or around March 10, 2011, police found Respondent and a friend sitting in Respondent's car at the back of a Motel 6. Respondent was under the influence of methamphetamine. In the car was a glass pipe for smoking methamphetamine, and in Respondent's glove box was a bag containing methamphetamine and another small pipe.

16. California Health and Safety Code section 11377(a). The circumstances are discussed above in ¶ 15.

17. California Health and Safety Code section 11550(a). The circumstances are discussed above in ¶ 15.

SECOND CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

18. Respondent is subject to disciplinary action under section 4301(h) of the Code, as further explained in section 4021 of the Code, in that Respondent self-administered a controlled substance. The circumstances are described above in the First Cause for Discipline.

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:

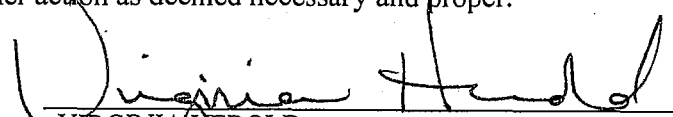
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Revoking or suspending Pharmacy Technician Registration Number TCH 57222,
issued to Maricriss Regina Agtane;

2. Ordering Maricriss Regina Agtane 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: 11/2/11



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

SF2011202113
20526902.doc