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

In the Matter of the Accusation Against:

DAVID F. DIAZ
1947 Norwalk Ave
Los Angeles, CA 90041
Pharmacy Technician Registration No. TCH
92998

Case No. 4388

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Respondent.

FINDINGS OF FACT

1. On or about December 14, 2012, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4388 against David F. Diaz (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 4, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 92998 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4388

1 and expired on January 31, 2013. The lapse in licensure, however, pursuant to Business and
2 Professions Code section 118(b) does not deprive the Board of its authority to institute or
3 continue this disciplinary proceeding.

4 3. On or about January 4, 2013, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 4388, Statement to Respondent, Notice of Defense, Request
6 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
7 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
8 section 4100, is required to be reported and maintained with the Board. Respondent's address of
9 record was and is: 1947 Norwalk Ave. Los Angeles, CA 90041.

10 4. Service of the Accusation was effective as a matter of law under the provisions of
11 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
12 124.

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

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

19 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
20 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
21 4388.

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

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

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 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. 4388, finds that

1 the charges and allegations in Accusation No. 4388, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 9. 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 \$1,500 as of April 9, 2013.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent David F. Diaz has subjected his
8 Pharmacy Technician Registration No. TCH 92998 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. Business and Professions Code section 4301, subdivision (j) (Possession of
14 Controlled Substances.)

15 b. Business and Professions Code section 4301, subdivision (f) (Dishonest Acts.)

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ORDER

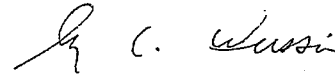
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 92998, heretofore issued to Respondent David F. Diaz, is revoked.

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 July 11, 2013.

It is so ORDERED ON June 11, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STANLEY C. WEISSER
Board President

51273031.DOC
DOJ Matter ID:LA2012507668

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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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. 4388

11 **DAVID F. DIAZ**
12 **1947 Norwalk Ave**
Los Angeles, CA 90041

A C C U S A T I O N

13 **Pharmacy Technician Registration No. TCH**
14 **92998**

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 4, 2009, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 92998 to David F. Diaz (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on January 31, 2013, 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 4060 of the Code states:

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

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

16 5. Section 4301 of the Code states:

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

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

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

25

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

3 6. Section 4300 of the Code states, in pertinent part:

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

5 "(b) The board shall discipline the holder of any license issued by the board, whose default
6 has been entered or whose case has been heard by the board and found guilty, by any of the
7 following methods:

8 "(1) Suspending judgment.

9 "(2) Placing him or her upon probation.

10 "(3) Suspending his or her right to practice for a period not exceeding one year.

11 "(4) Revoking his or her license.

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

14 ...

15 7. Section 118 of the Code states:

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

21 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
22 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
23 order of a court of law, or its surrender without the written consent of the board, shall not, during
24 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
25 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
26 provided by law or to enter an order suspending or revoking the license or otherwise taking
27 disciplinary action against the licensee on any such ground.

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1 occasions. When confronted with the thefts by loss prevention personnel, Respondent admitted to
2 taking an unknown quantity of hydrocodone tablets from the pharmacy.

3 FIRST CAUSE FOR DISCIPLINE

4 (Possession of Controlled Substances)

5 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), in
6 that he violated section 4060 and Health and Safety Code section 11350(a) by possessing
7 controlled substances without a lawful prescription. Complainant refers to and by this reference
8 incorporates the allegations set forth above in paragraph 11 as though set forth fully.

9 SECOND CAUSE FOR DISCIPLINE

10 (Dishonest Acts)

11 13. Respondent is subject to disciplinary action under section 4301, subdivision (f) in that
12 he committed acts of dishonesty by stealing two bottles of controlled substances from his
13 employer, CVS Pharmacy. Complainant refers to and by this reference incorporates the
14 allegations set forth above in paragraph 11 as though set forth fully.

15 PRAYER

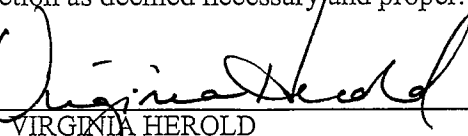
16 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
17 and that following the hearing, the Board of Pharmacy issue a decision:

18 1. Revoking or suspending Pharmacy Technician Registration Number TCH 92998,
19 issued to David F. Diaz;

20 2. Ordering David F. Diaz to pay the Board of Pharmacy the reasonable costs of the
21 investigation and enforcement of this case, pursuant to Business and Professions Code section
22 125.3; and

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

24 DATED: 12/14/12



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

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