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

In the Matter of the Accusation Against: **CALEB JERALD DANIEL** **P.O. Box 203** **Seaside, CA 93955** **Pharmacy Technician Registration No. TCH 93659** Respondent.	Case No. 4402 OAH No. 2013030440 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 14, 2012, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4402 against Caleb Jerald Daniel (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 25, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 93659 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4402. The Pharmacy Technician Registration expired on February 28, 2013, and has not been renewed.

This lapse in licensure, however, pursuant to Business and Professions Code section 118, subdivision (b), does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about December 27, 2012, Respondent was served by Certified Mail copies of the Accusation No. 4402, Statement to Respondent, Notice of Defense, Request for 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. Respondent's address of record was: 187 Palm Avenue, #31, Marina, CA 93933.

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. On or about January 8, 2013, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at the address of record provided on Respondent's Notice of Defense, which is: P.O. Box #203, Seaside, CA 93955. The Notice of Hearing informed him that an administrative hearing in this matter was scheduled for July 11, 2013. Respondent failed to appear at that hearing.

6. 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.

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. 4402, finds that the charges and allegations in Accusation No. 4402, 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 are $2,620.00 as of July 5, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Caleb Jerald Daniel has subjected his Pharmacy Technician Registration No. TCH 93659 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 Registration 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. Unprofessional Conduct (Bus. & Prof. Code, § 4301); Conviction of Substantially Related Crime (Bus. & Prof. Code, § 4301, subd. (l)); and Violation of Statute Regulating Controlled Substances (Bus. & Prof. Code, § 4301, subd. (j).)

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 93659, heretofore issued to Respondent Caleb Jerald Daniel, 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

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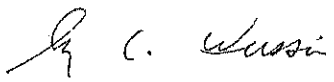
Seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 6, 2014.

It is so ORDERED ON February 4, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:SF2012901068

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: **CALEB JERALD DANIEL** **187 Palm Avenue, #31** **Marina, CA 93933** **Pharmacy Technician Registration No. TCH 93659** Respondent.	Case No. 4402 **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 August 25, 2009, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 93659 to Caleb Jerald Daniel (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on February 28, 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 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118, subdivision (b), of the Code provides, in pertinent part, 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.

7. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402, subdivision (e), of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

8. 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, of 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."

9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of the license.

10. 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."

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

11. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

12. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and includes the following:

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

. . .

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

13. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and a dangerous drug as designated by Code section 4022. It is a hallucinogenic drug.

COST RECOVERY

9. Section 125.3 of the Code provides, 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
(Unprofessional Conduct)
(Bus. & Prof. Code § 4301)

14. Respondent has subjected his pharmacy technician's license to discipline under Code section 4301 in that Respondent engaged in unprofessional conduct when he was arrested by officers from the Marina Police Department ("MPD") on or about January 22, 2012. The circumstances are as follows:

15. On or about January 22, 2012, at approximately 5:20 p.m., an officer from the Marina Police Department (Officer 1) was on patrol and was traveling behind Respondent's vehicle. Officer 1 conducted a "bumper pace" with Respondent's vehicle and determined that he was traveling 55 miles-per-hour in a 45 mile-per-hour zone. Officer 1 also observed Respondent's vehicle drift into the bicycle lane and back. Finally, Officer 1 noticed that Respondent's vehicle displayed expired registration tabs. Based upon these observations, Officer 1 initiated an enforcement stop. As Officer 1 approached the driver's side of Respondent's vehicle, he was

almost overwhelmed by the odor of burnt marijuana coming from the car. Officer 1 then requested additional officers to respond and assist with the enforcement stop.

16. Officer 1 identified Respondent as the driver of the vehicle based upon his California driver's license. There were two passengers in the vehicle. Officer 1 asked Respondent if there was any marijuana in the vehicle, and Respondent stated that there was, but that he had a cannabis club card. Officer 1 asked Respondent to produce the marijuana and the cannabis club card. Respondent produced a large pickle jar from the floorboard beneath his seat. The jar contained a green, leafy vegetable substance that Officer 1 recognized as marijuana. Respondent then produced a physician's recommendation for medical marijuana, however he could not produce a cannabis club card. Respondent stated that the marijuana he surrendered to Officer 1 was all of the marijuana in the vehicle.

17. Officer 1 instructed Respondent and his two passengers to exit the vehicle so that he could search for additional contraband within the vehicle. During his search, Officer 1 found two additional glass jars in a backpack on the driver's side floorboard, one of which contained a green, leafy substance that Officer 1 recognized as marijuana. The other jar was empty. Officer 1 also located loose marijuana under the driver's seat, and marijuana and cigar paper in a brown paper bag on the left rear floor board. Officer 1 searched the trunk and found suspected marijuana in a clear plastic bag with the words "Poison Berry Kush" written in black marker. Finally, Officer 1 found a digital scale that was disguised as an iPhone, with green, leafy residue on it.

18. While Officer 1 was searching Respondent's vehicle, another MPD Officer, Officer 2, questioned Respondent. Officer 2 asked Respondent if he had a cellular phone in his possession, and Respondent stated that he did. Respondent unlocked the phone at Officer 2's request, and Officer 2 searched through the text messages. Officer 2 read various text messages which led him to believe that Respondent was selling marijuana. Respondent admitted that he did not have a medical marijuana card and that he only possessed a recommendation letter, however he denied selling marijuana. Respondent stated that he allowed his friends to use his phone, and they must have sent the text messages that Officer 2 questioned him about.

19. Respondent was arrested for transportation of marijuana and possession with intent to distribute marijuana, and was transported to the MPD. Because it was the end of Officer 1's shift when he returned to the MPD, he placed all of the evidence seized from Respondent's arrest in a temporary evidence locker. At the beginning of his next shift, on or about January 23, 2012, Officer 1 retrieved the evidence from the evidence locker. Using a digital scale, Officer 1 weighed the marijuana seized from Respondent's vehicle and determined that the marijuana totaled 188.8 grams.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Conviction of Substantially Related Crime)
(Bus. & Prof. Code § 4301, subd. (l))

20. Respondent has subjected his pharmacy technician's license to discipline under Code section 4301, subdivision (l), as defined by California Code of Regulations, title 16, section 1770, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a licensee. Not only does his conviction involve statutes of this state regulating controlled substances or dangerous drugs, but it also evidences to a substantial degree his present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. The circumstances are as follows:

21. On or about February 24, 2012, in a criminal matter entitled *The People of the State of California v. Daniel, Caleb Jerald*, in the Monterey County Superior Court, Case No. SS120137A, Respondent was convicted by plea of nolo contendre of violating Health and Safety Code section 11357, subdivision (c) (possession of more than 28.5 grams of marijuana), a misdemeanor. Respondent was placed on probation for three years and ordered to obey all laws, submit to search and seizure as directed by a probation or peace officer, not use or possess drugs without a prescription, and to pay various fees and fines.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violation of Statute Regulating Controlled Substances)
(Bus. & Prof. Code § 4301, subd. (j))

22. Complainant realleges the allegations contained in paragraphs 14 through 21 above, and incorporates them as if fully set forth.

23. Respondent has subjected his pharmacy technician's license to discipline under Code section 4301, subdivision (j), in that he has violated a statute of this state regulating controlled substances and dangerous drugs. The circumstances are set forth in paragraphs 14 through 21, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 93659, issued to Caleb Jerald Daniel;

2. Ordering Caleb Jerald Daniel 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; and

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

DATED: 12/14/12

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

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