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

In the Matter of the Accusation Against:

RODNEY NAJAR BENTANCOURT
4667 W. 118th St.
Hawthorne, CA 90250

Pharmacy Technician Registration No. TCH
112469

Respondent.

Case No. 4503

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about April 19, 2013, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4503 against Rodney Najjar Bentancourt ("Respondent") before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 1, 2011, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration No. TCH 112469 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4503 and expired on January 31, 2013. Pursuant to Business and Professions Code section 4300.1, this

1 lapse in licensure does not deprive the Board of its authority to institute or continue this
2 disciplinary proceeding.

3 3. On or about May 29, 2013, Respondent was served by Certified and First Class Mail
4 with copies of the Accusation No. 4503, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
7 is required to be reported and maintained with the Board. Respondent's address of record was
8 and is: 4667 W. 118th St., Hawthorne, CA 90250.

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

12 5. The aforementioned documents in Paragraph 3 were not returned by the U.S. Postal
13 Service.

14 6. Government Code section 11506 states, in pertinent part:

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

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4503.

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

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

28 9. 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

1 file at the Board's offices regarding the allegations contained in Accusation No. 4503, finds that
2 the charges and allegations in Accusation No. 4503, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$1,622.50 as of February 5, 2014.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Rodney Najjar Bentancourt has
9 subjected his Pharmacy Technician Registration No. TCH 112469 to discipline.

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

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

14 (a) Business and Professions Code sections 4301, subdivision (l), and 490, in
15 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
16 unprofessional conduct in that Respondent was convicted of a crime substantially related to the
17 qualifications, functions, and duties of a registered pharmacy technician, to wit: one felony count
18 of violating Health and Safety code section 11359 [possession of marijuana for sale] in the
19 criminal proceeding entitled *The People of the State of California vs. Rodney Najjar Betancourt*
20 (Super. Ct. Los Angeles County, 2012, No. YA084088).

21 (b) Business and Professions Code section 4301, subdivision (j), in conjunction
22 with Health and Safety Code section 11359, on the grounds of unprofessional conduct in that
23 Respondent violated a state statute regulating a controlled substance to wit: marijuana.

24 (c) Business and Professions Code section 4301, subdivision (o), in conjunction
25 with Business and Professions Code section 4060, on the grounds of unprofessional conduct in
26 that Respondent violated the Pharmacy Practice Act by unlawfully possessing a controlled
27 substance to wit: marijuana.

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ORDER

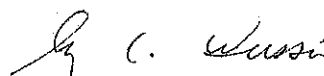
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 112469, heretofore issued to Respondent Rodney Najar Bentancourt, is revoked.

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 April 7, 2014.

It is so ORDERED ON March 6, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____
STAN C. WEISSER
Board President

51452780.DOC
DOJ Matter ID:LA2012508264

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 MARC D. GREENBAUM
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3 KIMBERLEE D. KING
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2581
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:
12 **RODNEY NAJAR BETANCOURT**
4667 W. 118th St.
13 Hawthorne, CA 90250
14 Pharmacy Technician Registration No. TCH
112469
15 Respondent.

Case No. 4503

ACCUSATION

17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy.
21 2. On or about June 1, 2011, the Board of Pharmacy issued Pharmacy Technician
22 Registration No. TCH 112469 to Rodney Najar Betancourt (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on January 31, 2013, unless renewed.

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JURISDICTION

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2 3. This Accusation is brought before the Board under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4
5 4. Section 118, subdivision (b) provides that the expiration of a license shall not deprive
6 the Board of jurisdiction to proceed with a disciplinary action during the period within which the
7 license may be renewed, restored, reissued or reinstated.

8 5. Section 490 states, in pertinent part:

9 "(a) In addition to any other action that a board is permitted to take against a licensee, a
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
12 or profession for which the license was issued.

13 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
14 discipline a licensee for conviction of a crime that is independent of the authority granted under
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the licensee's license was issued.

17 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
21 made suspending the imposition of sentence, irrespective of a subsequent order under the
22 provisions of Section 1203.4 of the Penal Code."

23 6. Section 4300 provides that every license issued by the Board is subject to discipline,
24 including suspension or revocation.

25 7. Section 4301 states, in pertinent part:

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

1
2 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
3 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
4 whether the act is a felony or misdemeanor or not.

5
6 "(j) The violation of any of the statutes of this state, or any other state, or of the United
7 States regulating controlled substances and dangerous drugs.

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

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

1 REGULATORY PROVISIONS

2 8. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

9 COST RECOVERY

10 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
11 law judge to direct a licentiate found to have committed a violation or violations of the licensing
12 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
13 case.

14 CONTROLLED SUBSTANCE/DANGEROUS DRUG

15 10. "Marijuana," is a schedule I controlled substance as defined in Health and Safety
16 Code section 11054, subdivision (d)(13), and is categorized a dangerous drug pursuant to section
17 4022.

18 FIRST CAUSE FOR DISCIPLINE

19 (Conviction of a Substantially Related Crime)

20 11. Respondent is subject to disciplinary action under sections 4300, 4301, subdivision
21 (1), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
22 Respondent was convicted of a crime substantially related to the qualifications, functions, and
23 duties of a pharmacy technician.

24 a. On or about July 17, 2012, after pleading nolo contendere, Respondent was convicted
25 of one felony count of violating Health and Safety code section 11359 [Possession of Marijuana
26 for Sale] in the criminal proceeding entitled *The People of the State of California vs. Rodney*
27 *Najar Betancourt* (Super. Ct. Los Angeles County, 2012, No. YA084088). The Court placed
28 Respondent on three (3) years probation and ordered Respondent to complete 20 days of Cal.

1 Trans work program.

2 b. The circumstances surrounding the conviction are that on or about April 18, 2012,
3 Respondent was arrested for possession of Marijuana and admitted to police officers that the
4 Marijuana was his and he intended to sell the Marijuana.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Drug Related Conviction)**

7 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
8 subdivision (j), on the grounds of unprofessional conduct, in that on or about July 17, 2012,
9 Respondent was convicted of a crime involving a controlled substance/dangerous drug.
10 Complainant refers to, and by this reference incorporates, the allegations set forth above in
11 paragraph 11, subparagraphs a and b, inclusive, as though set forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

14 13. Respondent is subject to disciplinary action under sections 4300 and 4301,
15 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed an act
16 involving moral turpitude, dishonesty, fraud, deceit, or corruption with the intent to substantially
17 benefit himself, or substantially injure another. Complainant refers to, and by this reference
18 incorporates, the allegations set forth above in paragraphs 11-12, inclusive, as though set forth
19 fully.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct / Violation of Pharmacy Practice Act)**

22 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
23 subdivision(s) (a) and / or (o), in that Respondent committed and an act of unprofessional conduct
24 and/or violated the Pharmacy Practice Act. Complainant refers to, and by this reference
25 incorporates, the allegations set forth above in paragraphs 11-13, inclusive, as though set forth
26 fully.

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PRAYER

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

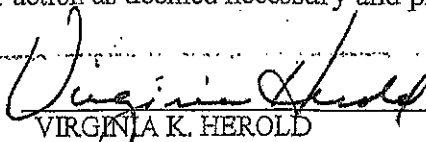
1. Revoking or suspending Pharmacy Technician Registration No. TCH 112469, issued to Rodney Najar Betancourt;

2. Ordering Rodney Najar Betancourt to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: _____

4/19/13



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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