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

In the Matter of the Accusation Against:
MARCOS JOEL MACIAS
18414 E. Citrus Edge St.
Azusa, CA 91702
**Pharmacy Technician Registration No. TCH
123101**

Respondent.

Case No. 4702
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On March 12, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No. 4702 against Respondent Marcos Joel Macias before the Board. The Accusation is attached as Exhibit A.
2. On April 19, 2012, the Board issued Pharmacy Technician Registration No. TCH 123101 to Respondent. The Pharmacy Technician Registration expired on July 31, 2013, and has not been renewed.
3. On March 19, 2014, Respondent was served by Certified and First Class Mail copies of Accusation No. 4702, 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

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

3 **18414 E. Citrus Edge St.**
4 **Azusa, CA 91702.**

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

7 5. On or about April 24, 2014, the aforementioned documents were returned by the U.S.
8 Postal Service marked "Unclaimed."

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

10 (c) The respondent shall be entitled to a hearing on the merits if the respondent
11 files a notice of defense, and the notice shall be deemed a specific denial of all parts
12 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.

13 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
14 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
15 4702.

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

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

20 9. Pursuant to its authority under Government Code section 11520, the Board finds
21 Respondent is in default. The Board will take action without further hearing and, based on the
22 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
23 taking official notice of all the investigatory reports, exhibits and statements contained therein on
24 file at the Board's offices regarding the allegations contained in Accusation No. 4702, finds that
25 the charges and allegations in Accusation No. 4702, are separately and severally, found to be true
26 and correct by clear and convincing evidence.

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1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable cost for Investigation
3 and Enforcement is **\$2,167.50** as of April 24, 2014.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Marcos Joel Macias has
6 subjected his Pharmacy Technician Registration No. TCH 123101 to discipline.

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

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

11 a. Conviction of a substantially related crime, to wit, first degree residential burglary.
12 (Bus. & Prof. Code, § 4301, subd. (l), Cal. Code Regs., tit. 16, § 1770.)

13 b. Commission of acts involving moral turpitude, dishonesty, fraud, deceit or corruption.
14 (Bus. & Prof. Code, § 4301, subd. (f).)

15 c. Violation of the Pharmacy Law. (Bus. & Prof. Code, § 4301, subd. (o).)

16 d. Commission of acts warranting denial of licensure. (Bus. & Prof. Code, § 4301,
17 subd. (p).)

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 123101, heretofore issued to Respondent Marcos Joel Macias, is revoked.

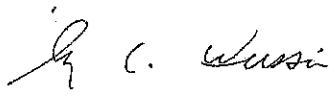
Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on June 30, 2014.

It is so ORDERED May 30, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

Attachment:
Exhibit A: Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 MATTHEW A. KING
Deputy Attorney General
4 State Bar No. 265691
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5 Los Angeles, CA 90013
matthew.king@doj.ca.gov
6 (213) 897-7446

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4702

12 **MARCOS JOEL MACIAS**
18414 E. Citrus Edge St.
13 Azusa, CA 91702

A C C U S A T I O N

[Gov. Code, § 11503.]

14 **Pharmacy Technician Registration No.**
TCH 123101

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On April 19, 2012, the Board issued Pharmacy Technician Registration
23 No. TCH 123101 to Respondent Marcos Joel Macias. The Pharmacy Technician Registration
24 expired on July 31, 2013 and has been cancelled. Notwithstanding the cancellation of the
25 registration, the Board retains jurisdiction under Business and Professions Code section 4300.1.

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1 JURISDICTION

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.

4 4. Section 4300, subdivision (a), states that “[e]very license issued may be suspended or
5 revoked.”

6 5. Section 4300.1 states:

7 “The expiration, cancellation, forfeiture, or suspension of a board-issued license by
8 operation of law or by order or decision of the board or a court of law, the placement of a license
9 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
10 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
11 proceeding against, the licensee or to render a decision suspending or revoking the license.”

12 STATUTORY PROVISIONS

13 6. Section 4301 states, in pertinent part:

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

17 ...

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

21 ...

22 (l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.”

11 ...

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

16 (p) Actions or conduct that would have warranted denial of a license...”

17 **REGULATORY PROVISION**

18 7. California Code of Regulations, title 16, section 1770, states:

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

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1 COST RECOVERY

2 8. Section 125.3 states, in pertinent part, that the Board may request the administrative
3 law judge to direct a licentiate found to have committed a violation or violations of the licensing
4 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
5 case.

6 FIRST CAUSE FOR DISCIPLINE

7 (Conviction of a Substantially Related Crime)

8 9. Respondent is subject to disciplinary action under section 4301, subdivision (l), in
9 conjunction with California Code of Regulations, title 16, section 1770, on the grounds of
10 unprofessional conduct, in that Respondent committed a crime substantially related to the
11 qualifications, functions or duties of a registrant, which to a substantial degree evidences his
12 present or potential unfitness to perform the functions authorized by his registration in a manner
13 consistent with the public health, safety, or welfare, as follows:

14 a. On January 22, 2013, Respondent was convicted upon a plea of *nolo contendere* of
15 one felony count of first degree residential burglary (Pen. Code, § 459). The Court sentenced him
16 to two years in prison and ordered him to pay restitution and fines totaling \$590. (*People v.*
17 *Marcos Joel Macias* (Super. Ct. LA County, 2013, No. KA099841).)

18 b. On the evening of Tuesday, October 23, 2012, Respondent and two associates were
19 scouting Hacienda Heights when they noticed a couple leaving their home. Once the couple
20 disappeared from view, Respondent and an accomplice passed through a locked gate that opened
21 onto the back of the house while a third accomplice waited in a car across the street. Respondent
22 pried open a sliding glass door and, together with his partner, he swept the house for valuables.
23 Unbeknownst to Respondent, an off-duty police officer had witnessed the pair enter the home and
24 reported the crime in progress. With the two burglars in the home, sheriffs cordoned off the area
25 and radioed for aerial assistance. Respondent and his cohort left the house with \$1,513 worth of
26 goods, mostly PlayStation games and petty cash. They did not travel far before hearing the
27 Sheriff's helicopter. Respondent fled across neighboring properties, discarding loot along the
28 way. In an attempt to change his appearance, he removed his sweatshirt and threw it on the

1 ground. Police found Respondent crouched behind bushes and apprehended him. Respondent
2 had \$203 in cash and a Sponge Bob necklace and metal rock in his pockets, all taken from the
3 home. Police recovered the balance of the stolen items in a neighboring yard and discovered a
4 Raven Arms-brand semi-automatic handgun next to Respondent's sweatshirt; the gun was loaded.
5 Respondent admitted that he belongs to a criminal street gang.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

8 10. Respondent is subject to disciplinary action under section 4301, subdivision (f), on
9 the grounds of unprofessional conduct, in that Respondent committed acts involving moral
10 turpitude, dishonesty, fraud, deceit, or corruption. Complainant realleges paragraph 9.

11 **THIRD CAUSE FOR DISCIPLINE**

12 **(Violation of the Pharmacy Law)**

13 11. Respondent is subject to disciplinary action under section 4301, subdivision (o), on
14 the grounds of unprofessional conduct, in that Respondent violated provisions of the Pharmacy
15 Law and regulations adopted pursuant to it. Complainant realleges paragraphs 9-10.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Acts Warranting Denial of Licensure)**

18 12. Respondent is subject to disciplinary action under section 4301, subdivision (p), on
19 the grounds of unprofessional conduct, in that Respondent committed acts that would have
20 warranted denial of a license. Complainant realleges paragraphs 9-11.

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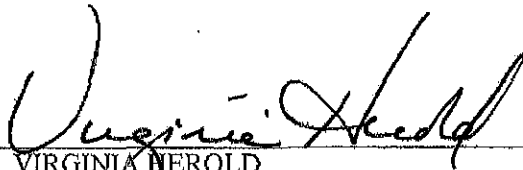
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PRAYER

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 123101, issued to Marcos Joel Macias;
2. Ordering Marcos Joel Macias 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: 3/12/14



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

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