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

In the Matter of the Accusation Against:  
**ORLANDO HERNANDEZ**  
10712 Crockett Street  
Sun Valley, CA 91352  
  
Pharmacy Technician Registration  
No. TCH 97566  
  
Respondent.

Case No. 4769

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about July 14 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4769 against Orlando Hernandez (“Respondent”) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about March 3, 2010, the Board of Pharmacy (“Board”) issued Pharmacy Technician Registration No. TCH 97566 to Respondent. The Pharmacy Technician Registration expired on July 31, 2011, and has not been renewed.
3. On or about July 25, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4769, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at

1 Respondent's address of record which, pursuant to Business and Professions Code section 4100,  
2 is required to be reported and maintained with the Board. Respondent's address of record was  
3 and is: 10712 Crockett Street, Sun Valley, CA 91352.

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

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

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

13 6. 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 4769.

16 7. 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  
20 respondent.

21 8. Pursuant to its authority under Government Code section 11520, the Board finds  
22 Respondent is in default. The Board will take action without further hearing and, based on the  
23 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
24 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
25 file at the Board's offices regarding the allegations contained in Accusation No. 4769, finds that  
26 the charges and allegations in Accusation No. 4769, are separately and severally, found to be true  
27 and correct by clear and convincing evidence.

28 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 is \$2,787.50 as of August 26, 2014.

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**DETERMINATION OF ISSUES**

1  
2       1.    Based on the foregoing findings of fact, Respondent Orlando Hernandez has  
3 subjected his Pharmacy Technician Registration No. TCH 97566 to discipline.

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

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

8       (a)   Respondent is subject to disciplinary action pursuant to Business and Professions  
9 Code section 4301, subdivision (l) and 490, in conjunction with California Code of Regulations,  
10 title 16, section 1770, in that Respondent has been convicted of a crime substantially related to  
11 the qualifications, functions or duties of a pharmacy technician, as follows:

12           (i)   On or about May 23, 2011, Respondent was convicted of one misdemeanor  
13 count of violating Health and Safety Code section 11377, subdivision (a) [possession of a  
14 controlled substance- Methamphetamine] in the criminal case entitled *The People of the State of*  
15 *California v. Orlando Hernandez* (Super. Ct. L.A. County, 2010, No. 1GN01493).

16       (b)   Respondent is subject to disciplinary action pursuant to Business and Professions  
17 Code section 4301, subdivision (j) as defined in section 4060, in that on or about April 16, 2011,  
18 Respondent obtained or possessed Methamphetamine, a controlled substance.

19       (c)   Respondent is subject to disciplinary action pursuant to Business and Professions  
20 Code section 4301, subdivision (h), in that on or about April 16, 2011, Respondent admitted that  
21 he used Methamphetamine and that he was in possession of a Methamphetamine pipe and two  
22 baggies that were for his own personal use.

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**ORDER**

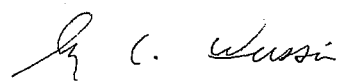
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 97566, heretofore issued to Respondent Orlando Hernandez, is revoked.

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 May 8, 2015.

It is so ORDERED on April 8, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_  
STAN C. WEISSER  
Board President

51588385.DOC  
DOJ Matter ID:LA2013509951  
03132015

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 ELYSE M. DAVIDSON  
Deputy Attorney General  
4 State Bar No. 285842  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2533  
6 Facsimile: (213) 897-2804

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. 4769

12 **ORLANDO HERNANDEZ**

**A C C U S A T I O N**

13 10712 Crockett Street  
14 Sun Valley, CA 91352

15 Pharmacy Technician Registration  
16 No. TCH.97566

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 3, 2010, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 97566 to Orlando Hernandez (Respondent). The Pharmacy  
24 Technician Registration expired on July 31, 2011, and has not been renewed.

25 **JURISDICTION**

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

28 ///

STATUTORY PROVISIONS

4. Section 490 states, in pertinent part:

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

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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 the provisions of Section 1203.4 of the Penal Code."

5. Section 492 states, in pertinent part:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest."

6. Section 4060 of the Code provides in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or other authorized prescriber.

1           7. Section 4300 provides in pertinent part, that every license issued by the Board is  
2 subject to discipline, including suspension or revocation.

3           8. Section 4300.1 states:

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

9           9. Section 4301 states, in pertinent part:

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

13           ....

14           "(h) The administering to oneself, of any controlled substance, or the use of any  
15 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or  
16 injurious to oneself, to a person holding a license under this chapter, or to any other person or to  
17 the public, or to the extent that the use impairs the ability of the person to conduct with safety to  
18 the public the practice authorized by the license.

19           ....

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

22           ....

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



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

#### 12 REGULATORY PROVISIONS

13 10. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

#### 20 COST RECOVERY

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

#### 25 CONTROLLED SUBSTANCE

26 12. "Methamphetamine," is a Schedule II controlled substance as designated by the  
27 Health and Safety Code section 11055, subdivision (d)(2) and is a stimulant having effect on the  
28 central nervous system.

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
6 duties of a pharmacy technician, as follows:

7 a. On or about May 23, 2011, pursuant to a plea agreement, Respondent was convicted  
8 of one misdemeanor count of violating Health and Safety Code section 11377, subdivision (a)  
9 [possession of a controlled substance- Methamphetamine] in the criminal case entitled *The*  
10 *People of the State of California v. Orlando Hernandez* (Super. Ct. L.A. County, 2010, No.  
11 1GN01493). The Court deferred pronouncement of sentence for 18 months pending  
12 Respondent's completion of a drug diversion program. On November 26, 2012, Respondent  
13 failed to appear, and the Court terminated the Respondent's Deferred Entry Judgment and  
14 reinstated the criminal proceedings.

15 b. The circumstances surrounding the conviction are that on or about April 16, 2011,  
16 while on routine patrol, Fontana Police Department officer(s) observed Respondent sitting in a  
17 parked car, and contacted him. While speaking to Respondent, the officer observed him to be  
18 lethargic, slow in answering the officer's questions, and had red eyes. Respondent admitted that  
19 he used Methamphetamine about a month ago. Respondent's hands were shaking and he  
20 appeared to be nervous. When asked if he had anything illegal on his person, Respondent pointed  
21 to his front left pants pocket and stated, "Yes. I have a meth pipe." When asked if he had  
22 anything else on his person or in his vehicle, Respondent stated, "Yes. I have two baggies with  
23 meth right here." He pointed to his front right pants pocket. Respondent admitted that the  
24 Methamphetamine pipe and the two baggies containing Methamphetamine were for his own  
25 personal use.

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