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

In the Matter of the Accusation Against: **CHRISTINE MARIE AUSTIN** **28798 Murrieta Road** **Menifee, CA 92586** **Pharmacy Technician Registration No. TCH 116122** Respondent.	Case No. 4787 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 12, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4787 against Christine Marie Austin (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about February 24, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 116122 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4787, expired on December 31, 2013, and was then cancelled. This lapse in licensure, however, pursuant to Business and Professions Code section 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about March 19, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4787, 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 and is: 28798 Murrieta Road, Menifee, CA 92586.

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 April 2, 2014, the aforementioned documents were returned by the U.S. Postal Service marked "Not deliverable as addressed - unable to forward"

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. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 4787.

8. 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.

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 file at the Board's offices regarding the allegations contained in Accusation No. 4787, finds that the charges and allegations in Accusation No. 4787, are separately and severally, found to be true and correct by clear and convincing evidence.

10. 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 $1,675.00 as of April 10, 2014.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Christine Marie Austin has subjected her Pharmacy Technician Registration No. TCH 116122 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. Respondent is subject to disciplinary action under Business and Professions Code section 4301, subdivision (l) in that on September 18, 2013, Respondent was convicted of the following crimes based on her plea of guilty: (1) violation of Penal Code section 459, a misdemeanor, (shoplifting); (2) violation of Health and Safety Code section 11364.1, a misdemeanor, (possession of drug paraphernalia); and (3) violation of Penal Code section 472, a misdemeanor, (possession of a counterfeit California driver's license), crimes substantially related to the practice of a pharmacy technician.

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 116122 issued to Respondent Christine Marie Austin 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 June 6, 2014.

It is so ORDERED May 7, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

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DOJ Matter ID:SD2013705539

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General
ANTOINETTE B. CINCOTTA
Deputy Attorney General
State Bar No. 120482
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2095
Facsimile: (619) 645-2061
Attorneys for Complainant

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

In the Matter of the Accusation Against: **CHRISTINE MARIE AUSTIN** **28798 Murrieta Road** **Menifee, CA 92586** **Pharmacy Technician Registration No. TCH 116122** Respondent.	Case No. 4787 **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 (Board), Department of Consumer Affairs.

2. On or about February 24, 2012, the Board issued Pharmacy Technician Registration Number TCH 116122 to Christine Marie Austin (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2013, unless renewed.

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JURISDICTION

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

4. Section 4300 of the Code states:

> (a) Every license issued may be suspended or revoked.
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> (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
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> (1) Suspending judgment.
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> (2) Placing him or her upon probation.
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> (3) Suspending his or her right to practice for a period not exceeding one year.
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> (4) Revoking his or her license.
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> (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.
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> . . .
>
> (e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 4300.1 of the Code states:

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

STATUTORY AUTHORITIES

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

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7. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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:
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> . . .
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> (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.
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REGULATIONS

9. California Code of Regulations (CCR), 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.

COSTS

10. Section 125.3 of the Code states, 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.

DRUG

11. Methamphetamine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and Professions Code section 4022.

12. Marijuana a Schedule I controlled substance pursuant to Health and Safety Code section 11054, subdivision (d).

FIRST CAUSE FOR DISCIPLINE

(Criminal Convictions on September 18, 2013 – Shoplifting, and Possession of Drug Paraphernalia)

13. Respondent is subject to disciplinary action under section Code section 4301, subdivision (l) in that she was convicted of crimes substantially related to the practice of a pharmacy technician. The circumstances are as follows:

14. On or about September 18, 2013, in Superior Court, County of Riverside entitled *People of the State of California v. Christine Marie Austin* (Case No. SWM1305033), Respondent was convicted based on her plea of guilty to: (1) violation of Penal Code section 459,

a misdemeanor, (shoplifting); and (2) violation of Health and Safety Code section 11364.1, a misdemeanor, (possession of drug paraphernalia).

15. The circumstances underlying the convictions are as follows: on June 30, 2013 at about 9:00 a.m., a Riverside County Sheriff's deputy responded to the Wal-Mart in San Jacinto for a reported shoplifting incident. The loss prevention officer for Wal-Mart had Respondent in custody at the time of the deputy's arrival. The loss prevention officer had observed Respondent and another unidentified male placing items into Respondent's purse, and under their clothing. When confronted, the male ran outside the store and into the parking lot. Respondent complied with the loss prevention officer's request to come to her office where she detained Respondent until the deputy arrived. Wal-Mart merchandise was recovered from Respondent's person and purse. The deputy placed Respondent under arrest, and during a pat down search of Respondent and her purse located a small glass pipe containing a crystalized substance, later found to be Methamphetamine.

16. On July 31, 2013, the Riverside Superior Court in Case No. SWM1305033 issued a Misdemeanor Complaint and Notice to Appear compelling Respondent to personally appear for arraignment at 9:00 a.m. on September 4, 2013. On September 4, 2013, Respondent failed to appear for arraignment, and a warrant was issued for her arrest.

17. On September 13, 2013, Respondent was arrested bearing a counterfeit driver's license, as detailed in paragraph 21 below.

18. As the result of her convictions, Respondent was sentenced by the court: to summary probation for 36 months beginning September 18, 2013; to serve 60 days of confinement with 48 days to be served in the Work Release Program and credit for 6 days of time served; to pay a fine and penalty assessment of $600.00; to pay booking fees of $434.00; to pay a restitution fine of $140.00; to pay a probation revocation restitution fine of $140.00; to submit to immediate search of her person/auto/home/premises/garage/storage areas, with or without cause, by a probation officer or law enforcement to search for stolen property and/or paraphernalia; and to have no direct or indirect contact with Wal-Mart and the identity theft victim who name and address Respondent used in the counterfeit driver's license as detailed in paragraph 21, below.

SECOND CAUSE FOR DISCIPLINE

(Criminal Convictions on September 18, 2013 –Possession of a Counterfeit California Driver's License)

19. Respondent is subject to disciplinary action under section Code section 4301, subdivision (l) in that she was convicted of crime substantially related to the practice of a pharmacy technician. The circumstances are as follows:

20. On or about September 18, 2013, in Superior Court, County of Riverside entitled *People of the State of California v. Christine Marie Austin* (Case No. SWM1306138) Respondent was convicted based on her plea of guilty to violation of Penal Code section 472, a misdemeanor, (possession of a counterfeit California driver's license).

21. The circumstances underlying the convictions are as follows: on September 13, 2013, at 7:11 p.m., a Riverside County Sheriff's deputy conducted a pedestrian check of a female, later identified as Respondent, at the intersection of Seventh Street and Estudillo Avenue, in San Jacinto. Respondent told the officer that she lost her identification card. She identified herself by name to the deputy, and gave her correct date of birth to him. Respondent also told the deputy that she may have outstanding warrants for her arrest. The deputy conducted a records check and confirmed that Respondent had an outstanding misdemeanor warrant in Case No. SWM1305033, referenced above. When asked if she had anything illegal in her purse, Respondent told the deputy she had Marijuana in her purse, and gave the deputy her consent to search it. Respondent's purse contained several bags of Marijuana, and a California driver's license with Respondent's photo and date of birth, but a different name. An investigation revealed that the name appearing on the driver's license card belongs to a woman from Murrieta, California who recently became the victim of identity theft with an ongoing investigation at the Canyon Lake Police Department. The driver's license number on the card belongs to a man from Delano, California.

22. As the result of her convictions, Respondent was sentenced by the court: to summary probation for 36 months beginning September 18, 2013; to serve 60 days of confinement with 48 days to be served in the Work Release Program and credit for 6 days of time served; to pay a fine

and penalty assessment of $600.00; to pay booking fees of $434.00; to pay a restitution fine of $140.00; to pay a probation revocation restitution fine of $140.00; to submit to immediate search of her person/auto/home/premises/garage/storage areas, with or without cause, by a probation officer or law enforcement to search for stolen property and/or paraphernalia; and to have no direct or indirect contact with Wal-Mart and the identity theft victim.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 116122, issued to Christine Marie Austin;

2. Ordering Christine Marie Austin 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;

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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