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

In the Matter of the Accusation Against:
GINGER ELLEN MUELLER
118 E. Shoreline Dr.
Long Beach, CA 90802
Pharmacy Technician Registration No. TCH
95304

Respondent.

Case No. 5025
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about July 11, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5025 against Ginger Ellen Mueller (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about October 27, 2009, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 95304 to Respondent. The Pharmacy Technician Registration expired on September 30, 2013, and has not been renewed.
3. On or about August 4, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5025, Statement to Respondent, Notice of Defense, Request for

1 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
2 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
3 is required to be reported and maintained with the Board. Respondent's address of record was
4 and is:

5 118 E. Shoreline Dr.
6 Long Beach, CA 90802.

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

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

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

16 6. Respondent failed to file a Notice of Defense within 15 days after service upon her of
17 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5025.

18 7. California Government Code section 11520 states, in pertinent part:

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

23 8. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on the
25 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
26 taking official notice of all the investigatory reports, exhibits and statements contained therein on
27 file at the Board's offices regarding the allegations contained in Accusation No. 5025, finds that
28 the charges and allegations in Accusation No. 5025, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 9. 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 costs for Investigation
3 and Enforcement is \$1,265.50 as of August 15, 2014.

4 DETERMINATION OF ISSUES

5 1. Based on the foregoing findings of fact, Respondent Ginger Ellen Mueller has
6 subjected her Pharmacy Technician Registration No. TCH 95304 to discipline.

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

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

11 a. On or about September 13, 2013, after pleading nolo contendere, Respondent was
12 convicted of one felony count of violating Health and Safety Code section 11379, subdivision (a)
13 [sale/offer to sell/transportation of a controlled substance] in the criminal proceeding entitled The
14 People of the State of California v. Ginger Ellen Mueller (Super. Ct. Los Angeles County, 2013,
15 No. NA081304). The Court sentenced Respondent to serve 20 days in Los Angeles County Jail
16 and placed her on 3 years probation, with terms and conditions.

17 b. The circumstances surrounding the conviction are that the Long Beach Police
18 Department had been conducting a narcotics investigation of a female with the nickname "G"
19 who was selling Methamphetamine. On or about August 15, 2013, August 22, 2013, and August
20 27, 2013, a Police Assistant, working in an undercover capacity, purchased Methamphetamine
21 from Respondent. On or about September 4, 2013, Respondent was detained by the Long Beach
22 Police Department. When asked if she had anything illegal on her, she stated she had some
23 "tweek" in her bra. Respondent removed the item and handed the officer a red plastic zip-to-go
24 bag containing an off-white, crystalline substance, believed to be Methamphetamine.
25 Respondent was subsequently arrested. During the booking procedure, Respondent admitted to
26 selling Methamphetamine on three occasions

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ORDER

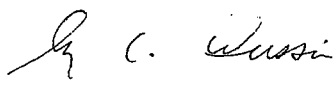
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 95304, heretofore issued to Respondent Ginger Ellen Mueller, is revoked.

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 October 20, 2014.

It is so ORDERED September 19, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

DOJ Matter ID:LA2014510886

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
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2 MARC GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
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300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2520
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**

12 In the Matter of the Accusation Against:

Case No. 5025

13 **GINGER ELLEN MUELLER**
118 E. Shoreline Dr.
Long Beach, CA 90802

A C C U S A T I O N

14 Pharmacy Technician Registration
No. TCH 95304

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the California State Board of Pharmacy (Board).

22 2. On or about October 27, 2009, the Board issued Pharmacy Technician Registration
23 No. TCH 95304 to Ginger Ellen Mueller (Respondent). The Pharmacy Technician Registration
24 expired on September 30, 2013, 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.

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STATUTORY PROVISIONS

1
2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states:

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

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:

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"(j) The violation of any of the statutes of this state, or 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.

....

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

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1 **REGULATORY PROVISIONS**

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

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

14 10. **CONTROLLED SUBSTANCES/DANGEROUS DRUGS**

15 "Methamphetamine," is a Schedule II controlled substance as designated by Health and
16 Safety Code section 11055, subdivision (d)(2) and is categorized as a dangerous drug pursuant to
17 section 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

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

20 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
21 490, 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 or
23 duties of a pharmacy technician, as follows:

24 a. On or about September 13, 2013, after pleading nolo contendere, Respondent was
25 convicted of one felony count of violating Health and Safety Code section 11379, subdivision (a)
26 [sale/offer to sell/transportation of a controlled substance] in the criminal proceeding entitled *The*
27 *People of the State of California v. Ginger Ellen Mueller* (Super. Ct. Los Angeles County, 2013,

28 ///

1 No. NA081304). The Court sentenced Respondent to serve 20 days in Los Angeles County Jail
2 and placed her on 3 years probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that the Long Beach Police
4 Department had been conducting a narcotics investigation of a female with the nickname "G"
5 who was selling Methamphetamine. On or about August 15, 2013, August 22, 2013, and August
6 27, 2013, a Police Assistant, working in an undercover capacity, purchased Methamphetamine
7 from Respondent. On or about September 4, 2013, Respondent was detained by the Long Beach
8 Police Department. When asked if she had anything illegal on her, she sated she had some
9 "tweek" in her bra. Respondent removed the item and handed the officer a red plastic zip-to-go
10 bag containing and off-white, crystalline substance, believed to be Methamphetamine.
11 Respondent was subsequently arrested. During the booking procedure, Respondent admitted to
12 selling Methamphetamine on three occasions.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Illegal Possession of a Controlled Substance)**

15 12. Respondent is subject to disciplinary action under section 4301, subdivision (j), on
16 the grounds of unprofessional conduct, in that Respondent was found to be in illegal possession of
17 Methamphetamine, a controlled substance. Complainant refers to, and by reference incorporates,
18 the allegations set forth above in paragraph 11, subparagraph (b), as though set forth fully.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

21 13. Respondent is subject to disciplinary action under section 4301, (o), in that
22 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
23 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
24 in paragraphs 11-12, subparagraphs (a) and (b), inclusive, as though set forth fully.

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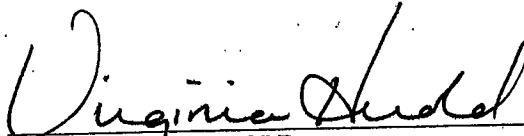
PRAYER

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 95304, issued to Ginger Ellen Mueller;
2. Ordering Ginger Ellen Mueller 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: _____

7/11/14



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

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