

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

In the Matter of the Accusation Against:
FELISHA HERNANDEZ
11655 Bananawood Ct.
Fontana, CA 92337

**Pharmacy Technician Registration No.
TCH 124009**

Respondent.

Case No. 5191

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about June 11, 2015, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5191 against Felisha Hernandez (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about June 19, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 124009 to Respondent. The Pharmacy Technician Registration expired on November 30, 2013, and has not been renewed.

///

1 3. On or about June 24, 2015, Respondent was served by Certified and First Class Mail
2 copies of the Accusation No. 5191, Statement to Respondent, Notice of Defense, Request for
3 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
4 Respondent's address of record which, pursuant to Business and Professions Code section 4100,
5 is required to be reported and maintained with the Board. Respondent's address of record was
6 and is: 11655 Bananawood Ct., Fontana, CA 92337.

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. On or about July 3, 2015, the aforementioned certified mailing documents were
11 returned by the U.S. Postal Service marked "F.O.E." On or about July 23, 2015, the
12 aforementioned First Class mailing documents were returned by the U.S. Postal Service marked
13 "Not at this address."

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 her of
21 the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 5191.

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

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

27 9. Pursuant to its authority under Government Code section 11520, the Board finds
28 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. 5191, finds that

1 the charges and allegations in Accusation No. 5191, are separately and severally, found to be true
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
5 and Enforcement is \$3,330.00 as of July 24, 2015.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Felisha Hernandez has subjected
8 her Pharmacy Technician Registration No. TCH 124009 to discipline.

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

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

13 a. Violating Business and Professions Code sections 490 and 4301 subdivision (l)
14 because Respondent was convicted of a crime substantially related to the qualifications,
15 functions, and duties of a pharmacy technician.

16 b. Violating Business and Professions Code sections 490 and 4301 subdivision (f)
17 because Respondent was convicted of receiving stolen property, an act involving dishonesty,
18 fraud, or deceit.

19 c. Violating Business and Professions Code sections 490 and 4301 subdivision (j)
20 because Respondent unlawfully possessed and used a controlled substance, namely,
21 methamphetamine.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 124009, heretofore issued to Respondent Felisha 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 September 25, 2015.

It is so ORDERED August 26, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

51840102.DOC
DOJ Matter ID:LA2014511733
07232015

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(FELISHA HERNANDEZ)

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
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:
11 **FELISHA HERNANDEZ**
12 **aka FELISHA HELEN HERNANDEZ**
11655 Bananawood Ct.
13 Fontana, CA 92337

Case No. 5191

14 **Pharmacy Technician Registration**
No. TCH 124009

ACCUSATION

15 Respondent.
16

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 June 19, 2012, the Board issued Pharmacy Technician Registration
23 Number TCH 124009 to Felisha Hernandez ("Respondent"). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein. The
25 Pharmacy Technician Registration expired on November 30, 2013 and has not been renewed.

26 ///

27 ///

28 ///

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 490 of the Code states:

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

9 ...
10 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or
11 a conviction following a plea of nolo contendere. Any action that a board is permitted
12 to take following the establishment of a conviction may be taken when the time for
13 appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
14 an order granting probation is made suspending the imposition of sentence, irrespective
15 of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

16 5. Section 493 of the Code states:

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

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

27 6. Section 4300 of the Code permits the Board to take disciplinary action to suspend
28 or revoke a license issued by the Board.

7. 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."

///

///

1 **COST RECOVERY**

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

6 **CONTROLLED SUBSTANCE**

7 Methamphetamine is a Schedule II controlled substance as designated by Health and Safety
8 Code section 11055, subdivision (d)(2), and has a stimulant effect on the central nervous system.

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Conviction of Substantially Related Crime)**

11 11. Respondent's registration is subject to disciplinary action under Business and
12 Professions Code sections 490 and 4301 subdivision (l) because the Respondent was convicted of
13 a crime substantially related to the qualifications, functions, and duties of a pharmacy technician.
14 The circumstances are as follows:

15 a. On or about October 16, 2013, Respondent was convicted of one felony count of
16 violating Penal Code section 496 subdivision (a) [receiving stolen property] in the criminal
17 proceeding entitled *People v. Felisha Helen Hernandez* (Super. Ct. San Bernardino County, 2013,
18 No. FWV1303332). The Court sentenced Respondent to serve 60 days in a San Bernardino
19 County Jail facility and was placed on 3 years probation. On or about June 27, 2014, Respondent
20 was found to be in violation of probation and was sentenced to an additional 120 days in jail.

21 b. The facts and circumstances of the criminal conviction are that on or about October 3,
22 2013, Respondent had reserved a room at a motel located in Ontario, California. Meanwhile,
23 Ontario police officers were at the motel working a vice detail with the Ontario/Upland Narcotics
24 Task Force and noticed suspicious activity at the Respondent's room. Respondent admitted she
25 was on criminal probation and gave the officers permission to check the room. While searching
26 the room, the officers noted that the room was filled with marijuana smoke and they found glass
27 pipes used to smoke methamphetamine. Respondent admitted smoking the methamphetamine.
28 The officers also found several bags with electronics, debit cards, blank gift cards, a California

1 vehicle license plate, and two laptop computers. The license plate was found inside an ice chest
2 and was related to a stolen vehicle.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Conviction of an Act Involving Dishonesty)**

5 12. Respondent's registration is subject to disciplinary action under Business and
6 Professions Code sections 490 and 4301 subdivision (f) because the Respondent was convicted of
7 receiving stolen property, a crime involving Complainant refers to, and by this reference
8 incorporates the allegations set forth in paragraph 11 and all subparagraphs, as though set forth
9 fully herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Unlawful Possession and Use of a Controlled Substance)**

12 13. Respondent's registration is subject to disciplinary action under Business and
13 Professions Code sections 490 and 4301 subdivision (j) because Respondent unlawfully possessed
14 and used a controlled substance namely methamphetamine. Complainant refers to, and by this
15 reference incorporates the allegations set forth in paragraph 11 and all subparagraphs, as though
16 set forth fully herein.

17 **DISCIPLINARY CONSIDERATIONS**

18 14. In order to determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges, as follows:

20 a. On or about February 11, 2013, Respondent was issued Citation No. CI201253630 for
21 violation of Business and Professions Code sections 4301 subdivision (f) and subdivision (l).
22 Respondent was cited and fined \$150.00 and has not paid this amount to the date of this pleading.

23 b. The facts and circumstances surrounding the citation are that on or about January 9,
24 2013, Respondent was convicted of two misdemeanor counts of violating Penal Code section 484
25 subsection (a) [petty theft] in the criminal proceedings entitled *People v Felisha Helen Hernandez*
26 (Super. Ct. San Bernardino County, 2013, No. MVA1202118) and *People v Felisha Helen*
27 *Hernandez* (Super. Ct. San Bernardino County, 2013, No. MVA1202127). On or about August
28 18, 2012, the Respondent stole merchandise from a Kmart store in Fontana, California, and on or

1 about August 22, 2012, the Respondent stole merchandise from a Walmart store in Fontana,
2 California.

3 c. On or about, January 9, 2013, Respondent was convicted of one misdemeanor count
4 of violating Penal Code section 484 subsection (a) [petty theft] in the criminal proceeding entitled
5 *People v Felisha Helen Hernandez* (Super. Ct. San Bernardino County, 2013, No.
6 MWV1204926).

7 d. The facts and circumstances of the criminal conviction are that on or about October
8 10, 2012, Respondent committed theft of personal property.

9 **PRAYER**

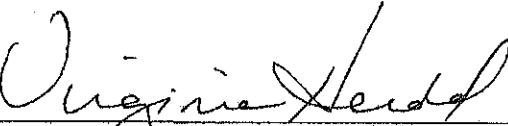
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board issue a decision:

12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 124009,
13 issued to Felisha Hernandez;

14 2. Ordering Felisha Hernandez to pay the Board the reasonable costs of the investigation
15 and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

17
18
19 DATED: 6/11/15



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

20
21
22
23 LA2014511733
51531785.doc
05072015