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

In the Matter of the Accusation Against:

CHRISTOFER MICHAEL NICODEMUS
6160 Arlington Ave., #D3/110
Riverside, CA 92504

Pharmacy Technician Registration
No. TCH 125709

Respondent.

Case No. 5270
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about November 15, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5270 against Christofer Michael Nicodemus (Respondent) before the Board of Pharmacy. (A copy of the Accusation is attached as Exhibit A.)
2. On or about August 30, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 125709 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5270 and will expire on March 31, 2016, unless renewed.
3. On or about December 4, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5270, Statement to Respondent, Notice of Defense, Request

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

5 6160 Arlington Ave., #D3/110
6 Riverside, CA 92504

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 December 16, 2014 and December 18, 2014, the aforementioned
11 documents served by Certified and First Class Mail, respectively, were returned by the U.S.
12 Postal Service marked "Return to Sender – Unable to Forward." The address on the documents
13 was the same as the address on file with the Board. Respondent failed to maintain an updated
14 address with the Board and the Board has made attempts to serve the Respondent at the address
15 on file. Respondent has not made himself available for service and therefore, has not availed
16 himself of his right to file a notice of defense and appear at hearing.

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

18 (c) The respondent shall be entitled to a hearing on the merits if the respondent
19 files a notice of defense, and the notice shall be deemed a specific denial of all parts
20 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.

21 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
22 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
23 5270.

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

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

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c. Respondent subjected his license to discipline under section 4301(f) of the Code in that on February 18, 2014, he committed an act of dishonesty when he stole merchandise from Stater Brothers.

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1 ORDER

2 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 125709, heretofore
3 issued to Respondent Christofer Michael Nicodemus, is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
5 written motion requesting that the Decision be vacated and stating the grounds relied on within
6 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
7 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

8 This Decision shall become effective on March 13, 2015.

9 It is so ORDERED February 11, 2015.

10 BOARD OF PHARMACY
11 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 By 
13 STAN C. WEISSER
14 Board President

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25 DOJ Matter ID: SD2014707748

26 Attachment:
27 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5270

12 **CHRISTOFER MICHAEL NICODEMUS**
13 **6160 Arlington Ave., #D3/110**
14 **Riverside, CA 92504**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 125709**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about August 30, 2012, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 125709 to Christofer Michael Nicodemus (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on March 31, 2016, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or revoked.”

5. Section 4300.1 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 PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490. Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code states:

(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

1 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
2 or when an order granting probation is made suspending the imposition of sentence,
3 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
4 Code.

5 (d) The Legislature hereby finds and declares that the application of this
6 section has been made unclear by the holding in *Petropoulos v. Department of*
7 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed
8 a significant number of statutes and regulations in question, resulting in potential
9 harm to the consumers of California from licensees who have been convicted of
10 crimes. Therefore, the Legislature finds and declares that this section establishes an
11 independent basis for a board to impose discipline upon a licensee, and that the amendments
12 to this section made by Senate Bill 797 of the 2007-2008 Regular
13 Session.

14
15 8. Section 492 of the Code states:

16 Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol and
18 drug problem assessment program under Article 5 (commencing with section
19 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
20 agency established under Division 2 ([Healing Arts] commencing with Section 500) of
21 this code, or any initiative act referred to in that division, from taking disciplinary
22 action against a licensee or from denying a license for professional misconduct,
23 notwithstanding that evidence of that misconduct may be recorded in a record
24 pertaining to an arrest.

25 This section shall not be construed to apply to any drug diversion program
26 operated by any agency established under Division 2 (commencing with Section 500)
27 of this code, or any initiative act referred to in that division.

28 9. 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.

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1 10. Section 4301 of the Code states:

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

6

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

10

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

13

14 (l) The conviction of a crime substantially related to the qualifications,
15 functions, and duties of a licensee under this chapter. The record of conviction
16 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
17 United States Code regulating controlled substances or of a violation of the statutes
18 of this state regulating controlled substances or dangerous drugs shall be conclusive
19 evidence of unprofessional conduct. In all other cases, the record of conviction
20 shall be conclusive evidence only of the fact that the conviction occurred. The
21 board may inquire into the circumstances surrounding the commission of the crime,
22 in order to fix the degree of discipline or, in the case of a conviction not involving controlled
23 substances or dangerous drugs, to determine if the conviction is of an
24 offense substantially related to the qualifications, functions, and duties of a licensee
25 under this chapter. A plea or verdict of guilty or a conviction following a plea of
26 nolo contendere is deemed to be a conviction within the meaning of this provision
27 The board may take action when the time for appeal has elapsed, or the judgment
28 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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11. Section 4022 of the Code states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

12. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

REGULATORY PROVISIONS

13. California Code of Regulations, title 16, section 1769 states:

.....

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

1 14. California Code of Regulations, title 16, section 1770 states:

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

8 **COST RECOVERY**

9 15. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

14 **DRUGS**

15 16. Methamphetamine is a Schedule II controlled substance pursuant to Health and Safety
16 Code section 11055, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section
17 4022.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(June 3, 2014 Criminal Conviction for Shoplifting and for Possession of a Controlled**
20 **Substance – Methamphetamine – on February 18, 2014)**

21 17. Respondent subjected her license to discipline under sections 490 and
22 4301, subdivision (l), of the Code in that he was convicted of a crime that is substantially related to
23 the qualifications, duties, and functions of a pharmacy technician. The circumstances are as
24 follows:

25 18. On June 3, 2014, in a criminal proceeding entitled *People of the State*
26 *of California v. Christofer Michael Nicodemus, aka Christopher Michael Nicodemus*, in the
27 Superior Court of California, County of Riverside, Case No. RIM1403083, Respondent was
28 convicted on his plea of guilty for violating Penal Code section 290.5 (shoplifting) and Health and

1 Safety Code section 11377(a) (possession of a controlled substance – methamphetamine),
2 misdemeanors.

3 19. As a result of the conviction, the Court placed Respondent on three years summary
4 probation and committed him to the custody of the Sheriff for 30 days, with 25 of the 30 days to
5 be served in the Work Release Program. The Court also ordered Respondent to obey all laws, not
6 knowingly use nor possess any controlled substances unless lawfully prescribed, submit to
7 chemical tests of blood, saliva, breath, or urine, or any reasonable physical test upon request of
8 probation or law enforcement officer, submit to search and seizure, pay various fines and fees, and
9 not have any direct or indirect contact with Stater Brothers.

10 20. The circumstances that led to the conviction are that on February 18, 2014, at
11 approximately 11:45 a.m., Riverside Police Department Officers responded to Stater Brothers
12 Market in the City of Riverside, California, regarding a shoplifter in custody. When Officers
13 arrived, Loss Prevention Staff (LPS) directed them to an individual that was observed selecting a
14 package of Blistex and go to a second isle to conceal the item, then exit the store without paying
15 for the item. The LPS told Officers that the individual (Respondent) was contacted outside of the
16 store and asked to re-enter the store, which he did, and that he admitted to stealing the Blistex
17 from the store. Officers placed Respondent under arrest and asked him if he had anything illegal in
18 his possession, to which Respondent told Officers that he had Methamphetamine in his back pack.
19 With Respondent's consent, and incident to the arrest, Officers searched the back pack and found
20 Methamphetamine in a plastic baggie inside a small plastic sealed container. The substance field
21 tested positive for Methamphetamine. Respondent was booked in the county jail.

22 21. On April 16, 2014, Respondent failed to appear at the arraignment and a bench
23 warrant was issued for his arrest. On May 7, 2014, Respondent failed to appear at a
24 warrant/arraignment and the bench warrant remained outstanding. On June 6, 2014, Respondent
25 appeared in Court and the bench warrant was recalled.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Illegal Possession of a Controlled Substance –
3 Methamphetamine – on February 18, 2014)

4 22. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
5 (o) of the Code in that on February 18 2014, Respondent was in possession of the controlled
6 substance and dangerous drug, Methamphetamine, without a prescription in violation of section
7 4060 of the Code, as is more fully detailed at paragraphs 17-21, above, which are incorporated
8 here by reference.

9 THIRD CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct – Commission of an Act Involving Dishonesty)

11 23. Respondent is subject to disciplinary action under section 4301(f) of the Code in that
12 on February 18, 2014, he committed an act of dishonesty when he stole merchandise from Stater
13 Brothers, as is more fully detailed at paragraphs 17-21, above, which are incorporated here by
14 reference.
15

16 PRAYER

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

19 1. Revoking or suspending Pharmacy Technician Registration Number TCH 125709
20 issued to Christofer Michael Nicodemus;

21 2. Ordering Christofer Michael Nicodemus to pay the Board of Pharmacy the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
23 section 125.3;

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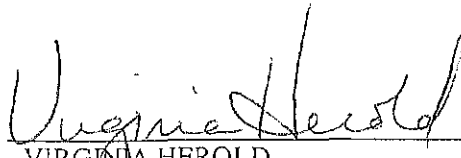
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3. Taking such other and further action as deemed necessary and proper.

DATED: _____

11/15/14



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

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