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

In the Matter of the Accusation Against:

**DANIEL PALOS
607 N. Lamarr Avenue
Rialto, CA 92376
Pharmacy Technician Registration No. TCH
66304**

Respondent.

Case No. 5335

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 31, 2016, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5335 against Daniel Palos (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about November 23, 2005, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 66304 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5335 and expired on May 31, 2015, and has not been renewed. This lapse in licensure, however,

1 pursuant to Business and Professions Code section 118(b) does not deprive the Board of its
2 authority to institute or continue this disciplinary proceeding.

3
4 3. On or about September 16, 2016, Respondent was served by Certified and First Class
5 Mail copies of the Accusation No. 5335, Statement to Respondent, Notice of Defense, Request
6 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
7 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
8 section 4100, is required to be reported and maintained with the Board. Respondent's address of
9 record was and is:

10 607 N. Lamarr Avenue
11 Rialto, CA 92376.

12 4. Service of the Accusation was effective as a matter of law under the provisions of
13 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
14 124.

15 5. Government Code section 11506(c) states, in pertinent part:

16

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

22 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 5335.

25 7. California Government Code section 11520(a) states, in pertinent part:

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

8. 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

1 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
2 taking official notice of all the investigatory reports, exhibits and statements contained therein on
3 file at the Board's offices regarding the allegations contained in Accusation No. 5335, finds that
4 the charges and allegations in Accusation No. 5335, are separately and severally, found to be true
5 and correct by clear and convincing evidence.

6 9. Taking official notice of its own internal records, pursuant to Business and
7 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
8 and Enforcement is \$3,007.50 as of October 13, 2015.

9 DETERMINATION OF ISSUES

10 1. Based on the foregoing findings of fact, Respondent Daniel Palos has subjected his
11 Pharmacy Technician Registration No. TCH 66304 to discipline.

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

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

16 a. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
17 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
18 Respondent was convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician as follows:

20 b. On or about June 16, 2015, after pleading guilty, Respondent was convicted of one
21 felony count of violating Vehicle Code section 10851, subdivision (a) [taking a vehicle without
22 consent] in the criminal proceeding entitled *The People of the State of California v. Daniel Palos*
23 (Super. Ct. San Bernardino County, 2015, No. FSB1501523). The Court sentenced Respondent
24 to serve 180 days in jail and placed him on 36 months probation, with terms and conditions.

25 Also, Respondent is subject to disciplinary action under section 4301, subdivision (f), in
26 that on or about August 13, 2014, Respondent committed acts involving dishonesty, fraud, or
27 deceit with the intent to substantially benefit himself, or substantially injure another. In addition,
28

1 Respondent is subject to disciplinary action under section 4301, subdivision (p), in that,
2 Respondent committed acts that would have warranted denial of his license.

3 ORDER

4 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 66304, heretofore
5 issued to Respondent Daniel Palos, is revoked.

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

10 This Decision shall become effective at 5:00 p.m. on March 29, 2017.

11 It is so ORDERED on February 27, 2017.

12
13 BOARD OF PHARMACY
14 DEPARTMENT OF CONSUMER AFFAIRS
15 STATE OF CALIFORNIA



16
17 By _____
18 Amy Gutierrez, Pharm.D.
19 Board President

20
21
22 52369474.DOC
23 DOJ Matter ID:LA2014512953

24 Attachment:
25 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 MARC D. GREENBAUM
Supervising Deputy Attorney General
3 CHRISTINA THOMAS
Deputy Attorney General
4 State Bar No. 171168
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2557
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**

11 In the Matter of the Accusation Against:

Case No. 5335

12 **DANIEL PALOS**
13 607 N. Lamarr Avenue
Rialto, CA 92376

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 66304

16 Respondent.

17
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 (Board), Department of Consumer Affairs.
22 2. On or about November 23, 2005, the Board issued Pharmacy Technician Registration
23 No. TCH 66304 to Daniel Palos (Respondent). The Pharmacy Technician Registration was in full
24 force and effect at all times relevant to the charges brought herein and expired on May 31, 2015,
25 the license was cancelled on September 1, 2015.

26 **JURISDICTION**

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

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

....

"(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.

....

"(p) Actions or conduct that would have warranted denial of a license."

REGULATORY PROVISIONS

8. California Code of Regulations, 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

1 crime or act shall be considered substantially related to the qualifications, functions or duties of a
2 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
3 licensee or registrant to perform the functions authorized by his license or registration in a manner
4 consistent with the public health, safety, or welfare."

5 **COST RECOVERY**

6 9. Section 125.3 states, in pertinent part, that the Board may request the administrative
7 law judge to direct a licensee found to have committed a violation or violations of the licensing
8 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
9 case.

10 **FIRST CAUSE FOR DISCIPLINE**

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

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

16 a. On or about June 16, 2015, after pleading guilty, Respondent was convicted of one
17 felony count of violating Vehicle Code section 10851, subdivision (a) [taking a vehicle without
18 consent] in the criminal proceeding entitled *The People of the State of California v. Daniel Palos*
19 (Super. Ct. San Bernardino County, 2015, No. FSB1501523). The Court sentenced Respondent
20 to serve 180 days in jail and placed him on 36 months probation, with terms and conditions.

21 b. The circumstances surrounding the conviction are that on or about May 5, 2015, the
22 Respondent was in possession of a stolen vehicle.

23 c. On or about August 13, 2014, after pleading guilty, Respondent was convicted of one
24 felony count of violating Penal Code section 487, subdivision (c) [grand theft from person] in the
25 criminal proceeding entitled *The People of the State of California v. Daniel Palos* (Super. Ct. San
26 Bernardino County, 2014, No. FWV1403042). The Court sentenced Respondent to serve 6
27 months in San Bernardino County Jail and placed him on 36 months probation, with terms and
28 conditions.

1 d. The circumstances surrounding the conviction are that on or about August 1, 2014,
2 Respondent entered a Sears store in Rancho Cucamonga, CA, selected several items and ran out
3 the door. A Loss Prevention Agent attempted to stop Respondent outside of the store.
4 Respondent became aggressive and raised his fist in an attempt to strike the agent. The agent
5 backed away and Respondent entered the vehicle that was waiting for him and fled the scene.
6 Respondent was later detained by the Rialto Police Department. When asked if he knew why he
7 was being detained, Respondent believed it was because he had stolen items from the Sears store
8 in Rancho Cucamonga earlier that evening. During the interview, Respondent admitted to
9 stealing items from a different Sears store the day before and returning them to this Sears store for
10 a gift card to purchase another item at this location and also steal other items.

11 **SECOND CAUSE FOR DISCIPLINE**

12 **(Acts Involving Dishonesty, Fraud, or Deceit)**

13 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
14 that on or about August 13, 2014 and May 5, 2015, Respondent committed acts involving
15 dishonesty, fraud, or deceit with the intent to substantially benefit himself, or substantially injure
16 another. Complainant refers to, and by reference incorporates, the allegations set forth above in
17 paragraph 10, as though set forth fully.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Commission of an Act that is Ground for Denial of License)**

20 12. Respondent is subject to disciplinary action under section 4301, subdivision (p), in
21 that, Respondent committed acts that would have warranted denial of his license. Complainant
22 refers to and by this reference incorporates the allegations set forth above in paragraph 10,
23 subparagraph, 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 66304, issued to Daniel Palos;
2. Ordering Daniel Palos 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: 5/31/16

Virginia Herold

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

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