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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. 5341

13 **ELIZABETH DURAN**
14 **12351 15th Street**
15 **Yucaipa, CA 92399**
16 **Pharmacy Technician Registration No. TCH**
17 **71273**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

18 Respondent.

19
20 **FINDINGS OF FACT**

21 1. On or about April 28, 2016, Complainant Virginia K. Herold, in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed
23 Accusation No. 5341 against Elizabeth Duran (Respondent) before the Board of Pharmacy.

24 (Accusation is attached herein as Exhibit A.)

25 2. On or about August 9, 2006, the Board of Pharmacy (Board) issued Pharmacy
26 Technician Registration No. TCH 71273 to the Respondent. The Pharmacy Technician
27 Registration expired on June 30, 2014, and was cancelled on October 5, 2014, pursuant to
28 Business & Professions Code section 4402, subdivision (e).

1 3. On or about April 28, 2016, Respondent was served by Certified Mail copies of the
2 Accusation Packet (Accusation No. 5341, Statement to the Respondent, Request for Discovery,
3 Notice of Defense, and copy of government code sections 11507.5, 11507.6 and 11507.7
4 provided pursuant to government code sections 11504 and 11505) at Respondent's address of
5 record which, pursuant to Business and Professions Code section 4100, is required to be reported
6 and maintained with the Board. Respondent's address of record was and is: 12351 15th Street,
7 Yucaipa, CA 92399.

8 4. On or about August 5, 2016, the Office of Administrative Hearings served the Notice
9 of Assigned Hearing Dates on all the parties. On August 12, 2016, Respondent was served by
10 Certified Mail copies of the Notice of Hearing in the present matter at Respondent's address of
11 record. However, Respondent failed to appear at the January 5, 2017 hearing.

12 5. 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 6. Government Code section 11506(c) states, in pertinent part:

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

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

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

26 8. Respondent filed to appear at the hearing, therefore waived her right to a hearing
27 pursuant to Government Code section 11520(a).

28 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

1 file at the Board's offices regarding the allegations contained in Accusation No. 5341, finds that
2 the charges and allegations in Accusation No. 5341, are separately and severally, found to be true
3 and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$12,774.00.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Elizabeth Duran has subjected
9 her Pharmacy Technician Registration No. TCH 71273 to discipline.

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

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

14 a. Sections 4301, subdivisions (j) and (o), and 4059, subdivision (a) of the Business &
15 Professions Code ("Code"), on the grounds of unprofessional conduct, in that Respondent
16 furnished to herself or another controlled substances or dangerous drugs without valid
17 prescriptions;

18 b. Section 4301, subdivision (g), of the Code on the grounds of unprofessional conduct,
19 in that on or about July 26, 2013, July 31, 2013, and August 1, 2013, Respondent created false
20 pharmacy records. Respondent forged prescription refill requests, altered the prescriber name,
21 fraudulently filled the prescriptions, picked up prescriptions, and provided prescriptions to a
22 patient without authorization from the physician;

23 c. Sections 4301, subdivision (o), and 4324, on the grounds of unprofessional conduct,
24 in that on or about July 26, 2013, July 31, 2013, and August 1, 2013, Respondent forged
25 prescriptions without prescriber's authorization;

26 d. Sections 4300, and 4301, subdivision (q), of the Code on the grounds of
27 unprofessional conduct, in that Respondent subverted or attempted to subvert an investigation of
28 the Board when she failed to present herself as agreed before the Board's investigators;

1 e. Section 4301, subdivision (f), of the Code on the grounds of unprofessional conduct,
2 in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
3 corruption;

4 f. Sections 4301, subdivisions (o) and (p), of the Code in that Respondent committed
5 acts violating the Pharmacy Law and / or federal and state laws that would have warranted denial
6 of a license.

7 **ORDER**

8 **IT IS SO ORDERED** that Pharmacy Technician Registration No. TCH 71273, heretofore
9 issued to Respondent Elizabeth Duran, is revoked.

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

14 This Decision shall become effective at 5:00 p.m. on March 2, 2017.

15 It is so ORDERED on January 31, 2017.

16
17 BOARD OF PHARMACY
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA

20 

21
22 By _____

Amy Gutierrez, Pharm.D.
Board President

23
24 52341572.DOC
25 DOJ Matter ID:LA2015500030

26 Attachment:
27 Exhibit A: Accusation
28

Exhibit A

Accusation

(ELIZABETH DURAN)

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Attorneys for Complainant
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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. 5341

13 **ELIZABETH DURAN**
12351 15th Street
Yucaipa, CA 92399

ACCUSATION

14 Pharmacy Technician Registration No. TCH 71273

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 9, 2006, the Board issued Pharmacy Technician Registration No.
22 TCH 71273 to Elizabeth Duran (Respondent). The Pharmacy Technician Registration expired on
23 October 5, 2014, and has not been renewed. Respondent's license was canceled on October 5,
24 2014, pursuant to Business and Professions Code section 4402(e).

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 (Code) unless otherwise
28 indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300, subdivision (a), of the Code states, in pertinent part, that "[e]very license issued may be suspended or revoked."

STATUTORY PROVISIONS

6. Section 4059 of the Code states, in pertinent part:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. . . ."

7. Section 4300.1 of the Code states, in pertinent part:

"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.

8. Section 4301 of the Code states, in pertinent part:

"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:

....

"(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.

"(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

"(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

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

....

"(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. . . ."

....

"(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board. . . ."

9. Section 4324 of the Code states, in pertinent part:

"(a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not more than one year.

"(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in the county jail for not more than one year."

COST RECOVERY

10. Section 125.3 of the Code provides, 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

DANGEROUS DRUGS

11. Cortisporin Otic, a brand name for a combination drug containing neomycin, polymyxin, and hydrocortisone, is a dangerous drug pursuant to section 4022 of the Code.

12. Desyrel, a brand name for trazodone, is a dangerous drug pursuant to section 4022 of the Code.

13. Diovan HCT, a brand name for a combination drug containing valsartan and hydrochlorothiazide, is a dangerous drug pursuant to section 4022 of the Code.

14. Fosamax, a brand name for alendronate sodium, is a dangerous drug pursuant to section 4022 of the Code.

15. Glucovance, a brand name for a combination drug containing glyburide and metformin, is a dangerous drug pursuant to section 4022 of the Code.

16. HCTZ, a brand name for hydrochlorothiazide, is a dangerous drug pursuant to section 4022 of the Code.

17. Lotensin, a brand name for benazepril, is a dangerous drug pursuant to section 4022 of the Code.

18. Lotrel, a brand name for a combination drug containing amlodipine and benazepril, is a dangerous drug pursuant to section 4022 of the Code.

19. Prilosec, a brand name for omeprazole, is a dangerous drug pursuant to section 4022 of the Code.

20. Singulair, a brand name for montelukast sodium, is a dangerous drug pursuant to section 4022 of the Code.

1 21. Voltaren, a brand name for diclofenac, is a dangerous drug pursuant to section 4022
2 of the Code.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unlawful Furnishing of Dangerous Drugs)**

5 22. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and
6 (o), and 4059, subdivision (a), on the grounds of unprofessional conduct, in that Respondent
7 furnished to herself or another controlled substances or dangerous drugs without valid
8 prescriptions, as follows:

9 a. Respondent was employed as pharmacy technician by the CVS Pharmacy #9649,
10 located at 33499 Yucaipa Blvd., Yucaipa, CA 92399. Respondent admitted to forging
11 prescription refill requests, altering the prescriber name, fraudulently filling the prescriptions,
12 picking up prescriptions, and providing prescriptions to her grandmother on or about July 28,
13 2013. The prescribed drugs included Cortisporin Otic, Desyrel, Diovan HCT, Fosamax,
14 Glucovance, HCTZ, Lotensin, Lotrel, Prilosec, Singulair, and Voltaren. Additionally,
15 Respondent fraudulently filled prescriptions of Accu-Chek Compact Drum Strips (test strips used
16 in a device that measures blood sugar level) on or about July 31, 2013, and Accu-Chek Multiclix
17 Lancet (needle-like device used to obtain drops of blood) on or about August 1, 2013.
18 Respondent forged and altered the prescriber name to her primary care physician, who confirmed
19 he had never seen Respondent's grandmother and authorized the refill requests. Respondent also
20 changed the prescriptions to be for a 90 days supply instead of 30 days. On or about
21 September 19, 2013, the CVS Pharmacy notified the Board that Respondent was terminated.

22 **SECOND CAUSE FOR DISCIPLINE**

23 **(Making False Pharmacy Records)**

24 23. Respondent is subject to disciplinary action under section 4301, subdivision (g), on
25 the grounds of unprofessional conduct, in that on or about July 26, 2013, July 31, 2013, and
26 August 1, 2013, Respondent created false pharmacy records. Respondent forged prescription
27 refill requests, altered the prescriber name, fraudulently filled the prescriptions, picked up
28 prescriptions, and provided prescriptions to a patient without authorization from the physician.

1 Complainant refers to and by this reference incorporates the allegations set forth above in
2 paragraph 22, subparagraph a, inclusive, as though set forth fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Forgery of Prescriptions)**

5 24. Respondent is subject to disciplinary action under sections 4301, subdivision (o), and
6 4324, on the grounds of unprofessional conduct, in that on or about July 26, 2013, July 31, 2013,
7 and August 1, 2013, Respondent forged prescriptions without prescriber's authorization.

8 Complainant refers to and by this reference incorporates the allegations set forth above in
9 paragraph 22, subparagraph a, inclusive, as though set forth fully.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 **(Subvert or Attempt to Subvert a Board Investigation)**

12 25. Respondent is subject to disciplinary action under section 4300, and 4301,
13 subdivision (q), on the grounds of unprofessional conduct, in that Respondent subverted or
14 attempted to subvert an investigation of the Board when she failed to present herself as agreed
15 before the Board's investigators, as follows:

16 a. On or about June 6, 2014, the Board's investigator sent an interview letter to
17 Respondent via Federal Express.

18 b. On or about June 10, 2014, the Board's investigator received an email from Federal
19 Express indicating that the interview letter had been signed for at the address of record with the
20 Board, and the delivery records indicated that Respondent signed for receiving the letter.

21 c. On or about June 24, 2014, the Board's investigator sent a second interview letter to
22 Respondent via United States Postal Service, and Respondent failed to respond.

23 d. On or about September 22, 2014, the Board's investigator sent a Written Notices of
24 Noncompliance to Respondent.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

27 26. Respondent is subject to disciplinary action under section 4301, subdivision (f), on
28 the grounds of unprofessional conduct, in that Respondent committed acts involving moral

1 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference
2 incorporates the allegations set forth above in paragraphs 22 through 25, inclusive, as though set
3 forth fully.

4 **SIXTH CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct / Violating Pharmacy Law)**

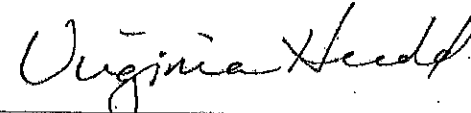
6 27. Respondent is subject to disciplinary action under Code sections 4301, subdivisions
7 (o) and (p), in that Respondent committed acts violating the Pharmacy Law and / or federal and
8 state laws that would have warranted denial of a license. Complainant refers to and by this
9 reference incorporates the allegations set forth above in paragraphs 22 through 26, inclusive, as
10 though set forth fully.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 71273,
15 issued to Elizabeth Duran ;
- 16 2. Ordering Elizabeth Duran to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 3/15/16



22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
28

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