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

In the Matter of the Accusation Against:
ERIC MATTHEW BIGGS
4206 12th Street
Riverside, CA 92501
Pharmacy Technician Registration
No. TCH 108899

Respondent.

Case No. 5353

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about March 24, 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. 5353 against Eric Matthew Biggs (Respondent) before the Board of Pharmacy.

(A copy of the Accusation is attached as Exhibit A.)

2. On or about December 9, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 108899 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times referenced in the Accusation. The Pharmacy Technician Registration expired on November 30, 2014, and has not been renewed.

3. 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

1 licensee shall not deprive the board of jurisdiction to commence or proceed with any
2 investigation of, or action or disciplinary proceeding against, the licensee or to render
a decision suspending or revoking the license.

3 4. On or about April 2, 2015, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. 5353, Statement to Respondent, Notice of Defense, Request for
5 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at
6 Respondent's address of record which, pursuant to Business and Professions Code section 136, is
7 required to be reported and maintained with the Board. Respondent's address of record was and
8 is:

9 4206 12th Street
10 Riverside, CA 92501

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

14 6. On or about April 21, 2015, the aforementioned documents served by certified mail
15 were returned by the U.S. Postal Service marked "Not Deliverable as Addressed – Unable to
16 Forward." The address on the documents was the same as the address on file with the Board.
17 Respondent failed to maintain an updated address with the Board and the Board has made
18 attempts to serve the Respondent at the address on file. Respondent has not made himself
19 available for service and therefore, has not availed himself of his right to file a notice of defense
20 and appear at hearing.

21 7. Government Code section 11506 states, in pertinent part:

22 (c) The respondent shall be entitled to a hearing on the merits if the respondent
23 files a notice of defense, and the notice shall be deemed a specific denial of all parts
24 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.

25 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
26 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
27 5353.

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1 9. California Government Code section 11520 states, in pertinent part:

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

6 10. Pursuant to its authority under Government Code section 11520, the Board finds
7 Respondent is in default. The Board will take action without further hearing and, based on the
8 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
9 taking official notice of all the investigatory reports, exhibits and statements contained therein on
10 file at the Board's offices regarding the allegations contained in Accusation No. 5353, finds that
11 the charges and allegations in Accusation No. 5353, are separately and severally, found to be true
12 and correct by clear and convincing evidence.

13 11. Taking official notice of its own internal records, pursuant to Business and
14 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
15 and Enforcement is \$922.80 as of April 22, 2015.

16 **DETERMINATION OF ISSUES**

17 1. Based on the foregoing findings of fact, Respondent Eric Matthew Biggs has
18 subjected his Pharmacy Technician Registration No. TCH 108899 to discipline.

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

20 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
21 Registration based upon the following violations alleged in the Accusation which are supported
22 by the evidence contained in the Default Decision Investigatory Evidence Packet.

23 a. Respondent's registration is subject to disciplinary action under section 4301(h)
24 of the Code in that on or about January 26, 2012, he used an illegal controlled substance to the
25 extent or in a manner as to be dangerous or injurious to himself.

26 b. Respondent's registration is subject to disciplinary action under section 4301(h)
27 of the Code in that on or about April 16, 2014, he used an illegal controlled substance to the
28 extent or in a manner as to be dangerous or injurious to himself.

///

1 c. Respondent's registration is subject to disciplinary action under section 4301(j)
2 of the Code in that on September 19, 2014, Respondent pled guilty to violating Health and Safety
3 Code section 11550(a), a misdemeanor statute, for willfully and unlawfully being under the
4 influence of a controlled substance not having been administered by and under the direction of a
5 person licensed by the State of California to prescribe and administer controlled substances.

6 d. Respondent's registration is subject to disciplinary action under section 4301(o)
7 of the Code in that he failed to pay a fine associated with a Citation within 30 days of the date of
8 assessment, as required by California Code of Regulations, title 16, section 1775.1(d).

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ORDER

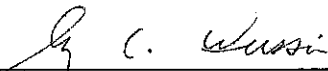
IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 108899, heretofore issued to Respondent Eric Matthew Biggs, is revoked.

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 June 29, 2015.

It is so ORDERED May 28, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By 
STAN C. WEISSER
Board President

DOJ Matter ID: SD2014708378

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

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3 State Bar No. 164015
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Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5353

13 **ERIC MATTHEW BIGGS**
14 **4206 12th Street**
Riverside, CA 92501

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 108899**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
- 23 2. On or about December 9, 2010, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 108899 to Eric Matthew Biggs (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein. The Pharmacy Technician Registration expired on November 30, 2014, and has not been
27 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 (Code) unless otherwise indicated.

4. Section 4300(a) of the Code states: "Every license issued may be suspended or revoked."

5. 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.

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STATUTORY PROVISIONS

6. Section 492 of the Code states:

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

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

7. Section 4301 of the Code states:

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:

....

(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.

1
2 (j) The violation of any of the statutes of this state, or any other state, or of the
3 United States regulating controlled substances and dangerous drugs.
4

5 (o) Violating or attempting to violate, directly or indirectly, or assisting in or
6 abetting the violation of or conspiring to violate any provision or term of this chapter or
7 of the applicable federal and state laws and regulations governing pharmacy, including
8 regulations established by the board or by any other state or federal regulatory agency.
9

8 REGULATORY PROVISIONS

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

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

17 9. California Code of Regulations, title 16, section 1775.1(d) states:

18 Failure of a person or entity cited to pay a fine within 30 days of the date of
19 assessment, unless the citation is being appealed, may result in disciplinary action by the
20 board. When a citation is not contested and a fine is not paid, the full amount of the fine
21 shall be added to the fee for renewal of the license and the license shall not be renewed
22 without payment of the renewal fee and fine.

18 COSTS

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

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1 FIRST CAUSE FOR DISCIPLINE

2 (Dangerous Use of a Controlled Substance on January 26, 2012)

3 11. Respondent's registration is subject to disciplinary action under section 4301(h) of
4 the Code in that he used an illegal controlled substance to the extent or in a manner as to be
5 dangerous or injurious to himself. The circumstances are as follows:

6 12. On or about the morning of January 26, 2012, a patrol officer with the Corona Police
7 Department was investigating a report of a commercial alarm. Outside of the business,
8 Respondent was sitting in the driver's seat of a parked vehicle with the seat fully reclined as if
9 trying to hide. The officer made contact with Respondent to determine why Respondent was
10 parked in the lot of a closed business with an activated alarm. Respondent had symptoms
11 consistent with the use of a stimulant: visibly dry mouth, eyelid flutter, muscle rigidity, a white
12 film on the tongue, and slightly constricted pupils with hippus present. During field evaluation
13 tests, Respondent exhibited a rapid pulse. Respondent was arrested for being under the influence
14 of a controlled substance. During booking, Respondent provided a blood sample that tested
15 positive for opiates.

16 SECOND CAUSE FOR DISCIPLINE

17 (Dangerous Use of a Controlled Substance on April 14, 2014)

18 13. Respondent's registration is subject to disciplinary action under section 4301(h) of
19 the Code in that he used an illegal controlled substance to the extent or in a manner as to be
20 dangerous or injurious to himself. The circumstances are as follows:

21 14. On or about the evening of April 14, 2014, the Corona Police Department was
22 dispatched to a report that two males had purchased hypodermic needles at a pharmacy and were
23 suspected of using the pharmacy's restroom to inject illegal narcotics. Upon arrival, patrol
24 officers intercepted a vehicle leaving the pharmacy's parking lot. An officer made contact with
25 Respondent, who was the driver. The officer observed that Respondent had several open sores on
26 his face and was trembling uncontrollably, symptoms consistent with an addiction to heroin.
27 Respondent denied using heroin in the pharmacy restroom; he last used heroin that morning.
28 Respondent also admitted that he used methamphetamine. After having Respondent exit the

1 vehicle, the officer observed signs and symptoms associated with narcotic use: eyelid flutter,
2 white coating on the inside of his mouth, and there were several visible track marks on his arms.
3 Respondent was arrested for being under the influence of a controlled substance. Prior to
4 transporting, Respondent alerted officers to a syringe he had hidden in his underwear. The needle
5 contained a small amount of brown residue and it appeared to have been used. Respondent's
6 companion was arrested for possession of heroin.

7 15. As a result of the arrest, on September 19, 2014, in a criminal proceeding entitled
8 *People of the State of California v. Eric Matthew Biggs*, in Riverside County Superior Court, case
9 number RIM1412364, Respondent pled guilty to a violation of Health and Safety Code section
10 11550(a), under the influence of a controlled substance, a misdemeanor. The court deferred entry
11 of judgment for 18 months, and Respondent agreed to complete a drug diversion program.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Violation of Statutes Involving Controlled Substances)**

14 16. Respondent's registration is subject to disciplinary action under section 4301(j) of the
15 Code in that on April 14, 2014, Respondent pled guilty to violating Health and Safety Code
16 section 11550(a), a misdemeanor statute, for willfully and unlawfully being under the influence
17 of a controlled substance not having been administered by and under the direction of a person
18 licensed by the State of California to prescribe and administer controlled substances.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Violation of Provisions or Regulations Governing Pharmacy)**

21 17. Respondent's registration is subject to disciplinary action under section 4301(o) of
22 the Code in that he failed to pay a fine associated with a Citation within 30 days of the date of
23 assessment, as required by California Code of Regulations, title 16, section 1775.1(d).

24 18. As a result of Respondent's January 26, 2012 arrest for being under the influence of a
25 controlled substance, as described in paragraph 12, above, he was issued Citation No. CI 2011
26 51206 on June 21, 2013. The Citation assessed an administrative fine in the amount of \$4,000.
27 Respondent failed to appeal the Citation, or pay the fine by the July 21, 2013 deadline.

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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 of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 108899, issued to Eric Matthew Biggs;
2. Ordering Eric Matthew Biggs to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/15

Virginia Herold

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

SD2014708378