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

In the Matter of the Accusation Against:  
**MICHAEL LUM  
1938 Cappelletti Court  
Mountain View, CA 94043**  
**Pharmacy Technician Registration No. TCH  
71131**  
  
Respondent.

Case No. 5633  
**DEFAULT DECISION AND ORDER**  
  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On or about December 21, 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. 5633 against Michael Lum (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about August 30, 2006, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 71131 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5633 and will expire on December 31, 2015, unless renewed.

3. On or about January 8, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5633, 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: 1938 Cappelletti Court, Mountain View, CA 94043.

5 4. Service of the Accusation was effective as a matter of law under the provisions of  
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
7 124.

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

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him  
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
16 5633.

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

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

22 8. Pursuant to its authority under Government Code section 11520, the Board finds  
23 Respondent is in default. The Board will take action without further hearing and, based on the  
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on  
26 file at the Board's offices regarding the allegations contained in Accusation No. 5633, finds that  
27 the charges and allegations in Accusation No. 5633, are separately and severally, found to be true  
28 and correct by clear and convincing evidence.

9 Taking official notice of its own internal records, pursuant to Business and  
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
and Enforcement is \$1,052.50 as of June 15, 2016.

DETERMINATION OF ISSUES

1  
2       1.     Based on the foregoing findings of fact, Respondent Michael Lum has subjected his  
3 Pharmacy Technician Registration No. TCH 71131 to discipline.

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

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

8       a.     Business and Professions Code Section 4301, subdivision (f) (Unprofessional  
9 Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption);

10       b.    Business and Professions Code Section 4301, subdivision (g) (Unprofessional  
11 Conduct: Knowingly Signing Documents Falsely Representing State of Facts);

12       c.     Business and Professions Code Section 4301, subdivision (l) (Unprofessional  
13 Conduct: Conviction of a Substantially-Related Crime).

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 71131, issued to Respondent Michael Lum, 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 at 5:00 p.m. on August 15, 2016.

It is so ORDERED on July 15, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(MICHAEL LUM)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
4 State Bar No. 161082  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2212  
Facsimile: (510) 622-2270  
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. 5633

12 **MICHAEL LUM**  
13 **1938 Cappelletti Court**  
**Mountain View, CA 94043**

**A C C U S A T I O N**

14 **Pharmacy Technician Registration No. TCH**  
15 **71131**

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, Department of Consumer Affairs.

22 2. On or about August 30, 2006, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 71131 to Michael Lum (Respondent). The Pharmacy Technician  
24 Registration was in effect at all times relevant to the charges brought in this Accusation and will  
25 expire on December 31, 2015, unless renewed.

26 ///

27 ///

28 ///

JURISDICTION

1  
2       3. This Accusation is brought before the Board of Pharmacy (Board), Department of  
3 Consumer Affairs, under the authority of the following laws. All section references are to the  
4 Business and Professions Code unless otherwise indicated.

5       4. Section 4300 of the Code states:

6       "(a) Every license issued may be suspended or revoked.

7       "(b) The board shall discipline the holder of any license issued by the board, whose default  
8 has been entered or whose case has been heard by the board and found guilty, by any of the  
9 following methods:

10       "(1) Suspending judgment.

11       "(2) Placing him or her upon probation.

12       "(3) Suspending his or her right to practice for a period not exceeding one year.

13       "(4) Revoking his or her license.

14       "(5) Taking any other action in relation to disciplining him or her as the board in its  
15 discretion may deem proper.

16       "....."

17       "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
18 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
19 shall have all the powers granted therein. The action shall be final, except that the propriety of  
20 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
21 Civil Procedure."

22       5. Section 4300.1 of the Code states:

23       "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
24 operation of law or by order or decision of the board or a court of law, the placement of a license  
25 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
26 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
27 proceeding against, the licensee or to render a decision suspending or revoking the license."

28       ///





1 and the board may inquire into the circumstances surrounding the commission of the crime in  
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the  
3 qualifications, functions, and duties of the licensee in question.

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

6 10. Section 4301 of the Code states:

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

10 ...  
11 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or  
12 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and  
13 whether the act is a felony or misdemeanor or not.

14 ...  
15 "(g) Knowingly making or signing any certificate or other document that falsely represents  
16 the existence or nonexistence of a state of facts.

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

1 of this provision. The board may take action when the time for appeal has elapsed, or the  
2 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
3 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
4 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
5 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
6 indictment.”

7 COST RECOVERY PROVISION

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

12 FACTUAL BACKGROUND

13 12. On or about May 13, 2014, to on or about May 16, 2014, while working as a store  
14 manager at Walgreens, Respondent stole a credit card and intentionally used the stolen credit card  
15 for various purchases. Respondent scribbled a line for the signature on each transaction. On or  
16 about January 22, 2015, in a criminal proceeding entitled *The People of the State of California v.*  
17 *Michael Lum*, in the Santa Clara County Superior Court, Case No. B1474038, Respondent was  
18 convicted by his plea of nolo contendere to one count of using personal identifying information  
19 without authorization and one count of shoplifting. (Penal Code §§ 530.5, subd. (a) and 459.5.)  
20 Pursuant to the conviction, Respondent entered into a plea agreement with terms and conditions  
21 which included, three years court-ordered probation and restitution in the amount of \$1,514.85.

22 FIRST CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct: Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)  
(Bus. & Prof. Code, § 4301, subd. (f)).

24 13. Respondent has subjected his pharmacy technician registration to discipline because  
25 he engaged in unprofessional conduct by committed an act of moral turpitude, dishonesty, fraud,  
26 deceit, or corruption (Bus. & Prof. Code, § 4301, subd. (f)). The circumstances are described in  
27 paragraphs 12, above.

28 SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Knowingly Signing Documents Falsely Representing State of Facts)

(Bus. & Prof. Code, § 4301, subd. (g))

1  
2 14. Respondent has subjected his pharmacy technician registration to discipline because  
3 he engaged in unprofessional conduct by knowingly signing documents that falsely represents the  
4 existence or nonexistent of a state facts (Bus. & Prof. Code, § 4301, subd. (g)). The  
5 circumstances are described in paragraphs 12, above.

6 THIRD CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct: Conviction of a Substantially-Related Crime)  
8 (Bus. & Prof. Code, § 4301, subd. (l))

9 15. Respondent has subjected his pharmacy technician registration to discipline because  
10 he engaged in unprofessional conduct by being convicted of a crime substantially related to the  
11 qualifications, functions, and duties of a licensee. (Bus. & Prof. Code, § 4301, subd. (l)). The  
12 circumstances are described in paragraphs 12, above.

13 PRAYER

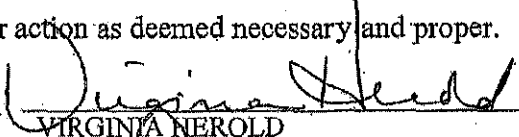
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 71131,  
17 issued to Michael Lum;

18 2. Ordering Michael Lum to pay the Board of Pharmacy the reasonable costs of the  
19 investigation and enforcement of this case, pursuant to Business and Professions Code section  
20 125.3; and

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

22 DATED: 12/21/15

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

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