

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

In the Matter of the Accusation Against:

**MARK ALBERT DUMAS
624 San Juhn Street
Spring Valley, CA 91997**

**Pharmacy Technician Registration
No. TCH 146620**

Respondent.

Case No. 5775

OAH No. 2016081179

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on March 13, 2017.

It is so ORDERED on February 10, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

12 In the Matter of the Accusation Against:

Case No. 5775

13 **MARK ALBERT DUMAS**
14 **624 San Juhn Street**
Spring Valley, CA 921997

OAH No. 2016081179

STIPULATED SURRENDER OF
LICENSE AND ORDER

15 **Pharmacy Technician Registration**
16 **No. TCH 1467720**

17 Respondent.

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19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
23 (Board). She brought this action solely in her official capacity and is represented in this matter by
24 Kamala D. Harris, Attorney General of the State of California, by Theodore S. Drcar, Deputy
25 Attorney General.

26 2. Mark Albert Dumas (Respondent) is represented by counsel William R. Winship, Jr.,
27 of Winship & Friedrichs, APC, 591 Camino de la Reina, Suite 1015, San Diego, CA 92108.

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1 3. On or about March 10, 2015, the Board issued Pharmacy Technician Registration No.
2 TCH 146620 to Respondent. That Pharmacy Technician Registration is set to expire on March
3 31, 2017, unless renewed.

4 **JURISDICTION**

5 4. Accusation No. 5775 was filed before the Board and is currently pending against
6 Respondent. The Accusation and all other statutorily required documents were properly served
7 on Respondent on June 24, 2016. Respondent timely filed his Notice of Defense contesting the
8 Accusation. A copy of Accusation No. 5775 is attached as Exhibit A and incorporated by
9 reference.

10 **ADVISEMENT AND WAIVERS**

11 5. Respondent has carefully read, and understands the charges and allegations in
12 Accusation No. 5775. Respondent also has carefully read, and understands the effects of this
13 Stipulated Surrender of License and Order.

14 6. Respondent is fully aware of his legal rights in this matter, including the right to a
15 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
16 his own expense; the right to confront and cross-examine the witnesses against him; the right to
17 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
18 the attendance of witnesses and the production of documents; the right to reconsideration and
19 court review of an adverse decision; and all other rights accorded by the California
20 Administrative Procedure Act and other applicable laws.

21 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 8. Respondent admits the truth of each and every charge and allegation in Accusation
25 No. 5775, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician
26 Registration No. TCH 146620 for the Board's formal acceptance.

27 9. Respondent understands that by signing this stipulation he enables the Board to issue
28 an order accepting the surrender of his Pharmacy Technician Registration without further process.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 146620, issued to Respondent Mark Albert Dumas, is surrendered and accepted by the Board of Pharmacy.

1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against

1 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
2 Respondent's license history with the Board of Pharmacy.

3 2. Respondent shall lose all rights and privileges as a pharmacy technician in California
4 as of the effective date of the Board's Decision and Order. Respondent shall relinquish his
5 pharmacy technician registration to the Board within ten (10) days of the effective date of this
6 decision.

7 3. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a new application for licensure. Respondent
9 may not apply for any license, permit, or registration from the Board for three (3) years from the
10 effective date of this decision.


11 4. Respondent stipulates that should he apply for any license from the Board on or after
12 the effective date of this decision, all allegations set forth in Accusation No. 5775 shall be
13 deemed to be true, correct and admitted by Respondent when the board determines whether to
14 grant or deny the application. Respondent shall satisfy all requirements applicable to that license
15 as of the date the application is submitted to the Board, including, but not limited to certification
16 by a nationally recognized body prior to the issuance of a new license. Respondent is required to
17 report this surrender as disciplinary action.

18 5. Respondent stipulates that should he apply for any license from the Board on or after
19 the effective date of this decision, investigation and prosecution costs in the amount of \$2,647.50
20 shall be paid to the Board prior to issuance of the license.

21 **ACCEPTANCE**

22 I have carefully read the Stipulated Surrender of License and Order. I understand the
23 stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this
24 Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to
25 be bound by the Decision and Order of the Board of Pharmacy.

26 DATED: 1/5/17

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28 MARK ALBERT DUMAS
Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: ^{January 12} ~~December~~ __, 201⁷

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General



THEODORE S. DR CAR
Deputy Attorney General
Attorneys for Complainant

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Exhibit A
Accusation No. 5775

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHEIDER
Senior Assistant Attorney General
3 ANTOINETTE B. CINCOTTA
Supervising Deputy Attorney General
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Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 5775

13 **MARK ALBERT DUMAS**
624 San Juhn Street
14 Spring Valley, CA 91997

A C C U S A T I O N

15 Pharmacy Technician Registration
16 No. TCH 146620

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 (Board), Department of Consumer Affairs.

23 2. On or about March 10, 2015, the Board issued Pharmacy Technician Registration
24 Number TCH 146620 to Mark Albert Dumas (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on March 31, 2017, unless renewed.

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JURISDICTION

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

4. Section 4300, subdivision (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 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.

7. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

8. 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

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discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

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

9. 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:

....

(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. . . .

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) 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).

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 11. California Code of Regulations, title 16, section 1770, states:

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

12 COSTS

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

19 FIRST CAUSE FOR DISCIPLINE

20 (March 24, 2015 Criminal Conviction for Arson on January 8, 2015)

21 13. Respondent has subjected his registration to discipline under sections 490 and 4301,
22 subdivision (1) of the Code in that he was convicted of a crime that is substantially related to the
23 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

24 a. On or about March 24, 2015, in a criminal proceeding entitled *People of the*
25 *State of California v. Mark Albert Dumas*, in San Diego County Superior Court, case number
26 CD260424, Respondent was convicted on his plea of guilty to violating Penal Code section 455,
27 arson, a felony, a lesser-included offense of the original charge of violating Penal Code section
28 451, subdivision (c), arson of an inhabited building, which was dismissed with a plea agreement.

b. As a result of the conviction, on May 27, 2015, Respondent was sentenced to
serve 365 days in jail, stayed pending successful completion of formal probation for three years.
Respondent was ordered to complete 10 days in the Public Service Program, pay fees, fines, and

1 restitution to the victim, and comply with felony probation terms. Respondent is further required
2 to register as an arsonist with law enforcement, and to stay away from all adult bookstores.

3 c. The facts that led to the conviction are that on or about 8:35 a.m. on January 8,
4 2015, an unidentified person went to an adult bookstore and used a road flare to start a fire in one
5 of the viewing booths. After viewing video surveillance taken inside and outside of the
6 bookstore, detectives observed that the unidentified suspect drove up in a silver truck and
7 retrieved something from the back area of the truck's cab. The suspect then entered the adult
8 bookstore, went to a viewing booth, and closed the door. Within approximately one minute,
9 smoke is seen coming from the top of the booth. The suspect is videotaped hurriedly leaving the
10 bookstore, getting into his truck, and leaving the area. Detectives circulated photos of the suspect
11 and the truck to the bookstore's employees, as well as other adult bookstores in the area.
12 Employees recognized Respondent as a frequent customer who would patronize the bookstores
13 multiple times each week. Shortly after noon, on January 12, 2015, the San Diego Police
14 Department responded to the bookstore after an employee recognized Respondent and his
15 vehicle. Officers located Respondent in a viewing booth and placed him under arrest. While
16 being questioned by detectives with the Metro Arson Strike Team, Respondent confessed that he
17 could not stop his constant desire to go to adult bookstores. He set the fire in the booth hoping he
18 would be banned from the bookstore, thereby helping him change his habits.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Commission of Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

21 14. Respondent has subjected his registration to discipline under section 4301,
22 subdivisions (a) and (f) of the Code for unprofessional conduct in that his conduct, as described in
23 paragraph 13 above, involved moral turpitude, dishonesty, fraud and/or deceit.

24 **PRAYER**

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

27 1. Revoking or suspending Pharmacy Technician Registration Number TCH 146620,
28 issued to Mark Albert Dumas;

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2. Ordering Mark Albert Dumas 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: 8/10/16

Virginia Herold

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

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