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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. 5873

13 **DEVIN ANDREW LABORICO**
14 11370 Brainard Ave.
15 Lake View Terrace, CA 91342

DEFAULT DECISION AND ORDER

16 **Pharmacy Technician Registration No. TCH**
17 **147162**

Respondent. [Gov. Code, §11520]

18 **FINDINGS OF FACT**

19 1. On or about November 14, 2016, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,
21 filed Accusation No. 5873 against Devin Andrew Laborico ("Respondent") before the Board of
22 Pharmacy. (Accusation attached as Exhibit A.)

23 2. On or about April 3, 2015, the Board of Pharmacy ("Board") issued Pharmacy
24 Technician Registration No. TCH 147162 to Respondent. The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought in Accusation No. 5873
26 and expired on November 30, 2016.

27 3. Business and Professions Code section 118, subdivision (b), provides that the
28 expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary

1 action during the period within which the license may be renewed, restored, reissued or
2 reinstated.

3 4. Section 4300.1 of the Code states:

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

9 5. On or about December 8, 2016, Respondent was served by Certified and First Class
10 Mail copies of the Accusation No. 5873, Statement to Respondent, Notice of Defense, Request
11 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
12 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
13 section 4100, is required to be reported and maintained with the Board. Respondent's address of
14 record was and is: 11370 Brainard Ave., Lake View Terrace, CA 91342.

15 6. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 7. Government Code section 11506(c) states, in pertinent part:

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

24 8. Respondent failed to file a Notice of Defense within 15 days after service upon him
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 5873.

27 9. California Government Code section 11520(a) states, in pertinent part:

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

1 10. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
4 taking official notice of all the investigatory reports, exhibits and statements contained therein on
5 file at the Board's offices regarding the allegations contained in Accusation No. 5873, finds that
6 the charges and allegations in Accusation No. 5873, are separately and severally, found to be true
7 and correct by clear and convincing evidence.

8 11. Taking official notice of its own internal records, pursuant to Business and
9 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
10 and Enforcement are \$537.50 as of January 11, 2017.

11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent Devin Andrew Laborico has
13 subjected his Pharmacy Technician Registration No. TCH 147162 to discipline.

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

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

18 a. Business and Professions Code sections 490, subdivision (a), and 4301, subdivision
19 (I), in that Respondent was convicted of a crime substantially related to the qualifications,
20 functions, and duties of a pharmacy technician. Specifically, on or about April 26, 2016, in the
21 case of *People v. Devin Andrew Laborico*, Superior Court of California, County of Los Angeles,
22 Case No. 5PK0558, Respondent was convicted by the court on his plea of guilty of violating
23 Health and Safety Code section 11350 (possession of cocaine, a controlled substance), a
24 misdemeanor. The court ordered deferred entry of judgment for eighteen months and ordered
25 Respondent to pay fines, enroll in an approved substance abuse treatment program, and submit to
26 periodic controlled substance testing.

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1 b. Business and Professions Code sections 490, subdivision (a), and 4301, subdivision
2 (j), by and through Code section 4060 and Health and Safety Code sections 11055(b)(6) and
3 11350, in that Respondent possessed cocaine.

4 **ORDER**

5 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 147162, heretofore
6 issued to Respondent Devin Andrew Laborico, is revoked.

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

11 This Decision shall become effective at 5:00 p.m. on March 16, 2017.

12 It is so ORDERED on February 14, 2017.

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

17 

18
19 By

20 Amy Gutierrez, Pharm.D.
21 Board President

22 52346733.DOC
23 DOJ Matter ID:LA2016601625

24 Attachment:
25 Exhibit A: Accusation
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Exhibit A

Accusation

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5873

12 **DEVIN ANDREW LABORICO**
11370 Brainard Ave.
13 Lake View Terrace, CA 91342

A C C U S A T I O N

14 Pharmacy Technician Registration No.
15 TCH 147162

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 April 3, 2015, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 147162 to Devin Andrew Laborico (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on November 30, 2016, unless renewed.

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1 JURISDICTION

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 (Code) unless otherwise indicated.

5 4. Section 4300 of the Code states, in pertinent part:

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

7 5. Section 4300.1 of the Code states:

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

13 BUSINESS AND PROFESSIONS CODE

14 6. Section 490 of the Code states, in pertinent part:

15 "(a) In addition to any other action that a board is permitted to take against a licensee, a
16 board may suspend or revoke a license on the ground that the licensee has been convicted of a
17 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
18 or profession for which the license was issued.

19 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
20 discipline a licensee for conviction of a crime that is independent of the authority granted under
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
22 of the business or profession for which the licensee's license was issued. . . ."

23 7. Section 4060 of the Code states:

24 "No person shall possess any controlled substance, except that furnished to a person upon
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
27 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
28 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,

1 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
2 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
3 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
4 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
5 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
6 labeled with the name and address of the supplier or producer.

7 Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a
8 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and
9 devices."

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

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

14 "...

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

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 HEALTH AND SAFETY CODE

8 9. California Health and Safety Code section 11350 states, in pertinent part:

9 "(a) Except as otherwise provided in this division, every person who possesses (1) any
10 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or
12 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic
14 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian
15 licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of
16 Section 1170 of the Penal Code. . . ."

17 COST RECOVERY

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

22 CONTROLLED SUBSTANCE

23 11. Cocaine is a Schedule II controlled substance pursuant to Health and Safety Code
24 section 11055, subdivision (b)(6), and a dangerous drug pursuant to Code section 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Criminal Conviction)

3 12. Respondent is subject to disciplinary action under sections 490, subdivision (a), and
4 4301, subdivision (l), of the Code in that on or about April 26, 2016, Respondent was convicted
5 of a crime substantially related to the qualifications, functions, and duties of a pharmacy
6 technician, as follows:

7 13. On or about April 26, 2016, in the case of *People v. Devin Andrew Laborico*,
8 Superior Court of California, County of Los Angeles, Case No. 5PK0558, Respondent was
9 convicted by the court on his plea of guilty of violating Health and Safety Code section 11350
10 (possession of cocaine, a controlled substance), a misdemeanor. The court ordered deferred entry
11 of judgment for eighteen months and ordered Respondent to pay fines, enroll in an approved
12 substance abuse treatment program, and submit to periodic controlled substance testing. The
13 circumstances of the crime are as follows:

14 14. On or about November 1, 2015, while Respondent was entering a concert at the Los
15 Angeles County Fairgrounds, an officer conducted a voluntary search of Respondent and asked
16 Respondent what he had in his pants. Respondent removed a small clear baggie containing white
17 powder from the front of his pants, handed the baggie to the officer, and advised the officer that
18 the baggie contained cocaine. Respondent was arrested for possession of a controlled substance.

19 SECOND CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct - Unlawful Possession of Controlled Substance)

21 15. Respondent is subject to disciplinary action under sections 490, subdivision (a), and
22 4301, subdivision (j), of the Code, by and through Code section 4060 and Health and Safety Code
23 sections 11055(b)(6) and 11350, in that on or about November 1, 2015, Respondent possessed
24 cocaine. The circumstances are described with more particularity in paragraph 14, above.

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1 PRAYER

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

4 1. Revoking or suspending Pharmacy Technician Registration No. TCH 147162, issued
5 to Devin Andrew Laborico;

6 2. Ordering Devin Andrew Laborico to pay the Board of Pharmacy the reasonable costs
7 of investigation and enforcement of this case, pursuant to Code section 125.3; and,

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

9
10 DATED: 11/14/16

Virginia Herold

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

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