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

In the Matter of the Accusation Against:  
**MARIO CARMELO GALLARDO**  
**339 Marcos Street, Apartment 104**  
**San Marcos, CA 92069**  
**Pharmacy Technician Registration No. TCH 138664**  
Respondent.

Case No. 5910  
**DEFAULT  
DECISION  
AND ORDER**  
[Gov. Code, §11520]

**FINDINGS OF FACT**

1. On September 23, 2016, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, filed Accusation No. 5910 against Mario Carmelo Gallardo (Respondent) before the Board. (Accusation attached as Exhibit A.)
2. On February 4, 2014, the Board issued Pharmacy Technician Registration No. TCH 138664 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5910, and will expire on April 30, 2017, unless renewed.
3. On October 6, 2016, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5910, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)

1 at Respondent's address of record which, pursuant to Business and Professions Code  
2 (Code)section 4100, is required to be reported and maintained with the Board. Respondent's  
3 address of record was and is 339 Marcos Street, Apartment 104, San Marcos, CA 92069.

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

6 5. On October 31, 2016, the aforementioned documents were returned by the U.S.  
7 Postal Service marked "Unclaimed." The address on the documents was the same as the address  
8 on file with the Board. Respondent failed to maintain an updated address with the Board and the  
9 Board has made attempts to serve the Respondent at the address on file. Respondent has not  
10 made himself available for service and therefore, has not availed himself of his right to file a  
11 notice of defense and appear at hearing.

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

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

18 7. Respondent failed to file a Notice of Defense within 15 days after service upon  
19 him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation  
20 No. 5910.

21 8. 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  
23 at 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  
25 without any notice to respondent . . . .

26 9. Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 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  
file at the Board's offices regarding the allegations contained in Accusation No. 5910, finds that

1 the charges and allegations in Accusation No. 5910, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 10. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for  
5 Investigation and Enforcement is \$1,035.00 as of December 7, 2016.

6 **DETERMINATION OF ISSUES**

7 1. Based on the foregoing findings of fact, Respondent Mario Carmelo Gallardo has  
8 subjected his Pharmacy Technician Registration No. TCH 138664 to discipline.

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

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

13 a. Respondent has subjected his Pharmacy Technician Registration to  
14 discipline under Code section 4301, subdivision (j) in that he committed acts that violated  
15 statutes of the State of California regulating controlled substances and dangerous drugs. The  
16 circumstances are that on January 10, 2016, during an enforcement stop in Carlsbad, California,  
17 Respondent admitted to possession of some medication. An officer searched Respondent and  
18 located a pill bottle inside his jacket pocket containing 78 pills of antihistamine, eight whole and  
19 three half Xanax pills, and 17 Valium pills. Respondent was arrested for possession of Xanax  
20 and Valium without a prescription and transported to the Vista Detention Facility.

21 b. Respondent has subjected his Pharmacy Technician Registration to  
22 discipline under Code section 4301, subdivision (o), in that he committed acts that violated  
23 pharmacy laws of the State of California regulating controlled substances and dangerous drugs.

24 c. Respondent subjected his Pharmacy Technician Registration to discipline  
25 under Code section 4301, subdivision (p), in that Respondent possessed controlled substances  
26 without a prescription in violation of Code section 4060, conduct that would have warranted the  
27 denial of a pharmacy technician registration under Code section 480, subdivision (a)(3)(A).

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**ORDER**

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 138664, heretofore issued to Respondent Mario Carmelo Gallardo, 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 February 9, 2017.

It is so ORDERED on January 10, 2017.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By \_\_\_\_\_

Amy Gutierrez, Pharm.D.  
Board President

81526165.DOC  
DOJ Matter ID:SD2016701763

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

(MARIO CARMELO GALLARDO)

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Senior Assistant Attorney General  
3 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
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6 San Diego, CA 92186-5266  
Telephone: (619) 738-9431  
7 Facsimile: (619) 645-2061  
*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. 5910

13 **MARIO CARMELO GALLARDO**  
14 **339 Marcos Street, Apartment 104**  
**San Marcos, CA 92069**

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

15 **Pharmacy Technician Registration No. TCH**  
16 **138664**

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

24 2. On February 4, 2014, the Board issued Pharmacy Technician Registration  
25 Number TCH 138664 to Mario Carmelo Gallardo (Respondent). The Pharmacy Technician  
26 Registration was in full force and effect at all times relevant to the charges brought herein, and  
27 will expire on April 30, 2017, unless renewed.

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1 JURISDICTION

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

5 4. Code section 4300, subdivision (a) provides that every license issued by the  
6 Board may be suspended or revoked.

7 5. Code section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law,  
10 the placement of a license on a retired status, or the voluntary surrender of a  
11 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.

12 STATUTORY PROVISIONS

13 6. Code section 480 states, in pertinent part:

14 (a) A board may deny a license regulated by this code on the grounds  
15 that the applicant has one of the following:

16 ...

17 (3) (A) Done any act that if done by a licentiate of the business or  
profession in question, would be grounds for suspension or revocation of license.

18 ....

19 7. Code section 492 states:

20 Notwithstanding any other provision of law, successful completion of any  
21 diversion program under the Penal Code, or successful completion of an alcohol  
22 and drug problem assessment program under Article 5 (commencing with Section  
23 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit  
24 any agency established under Division 2 (commencing with Section 500) of this  
25 code, or any initiative act referred to in that division, from taking disciplinary  
26 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.

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8. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_\_," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Code section 4060 states:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, third-party logistics provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Code section 4301 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:

...

(j) The violation of any of the statutes of this state, or 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.



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(p) Actions or conduct that would have warranted denial of a license.

....

11. Health & Safety Code section 11057 states, in pertinent part:

(a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

...

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alprazolam.

...

(9) Diazepam.

....

12. Health and Safety Code section 11375 states, in pertinent part:

...

(b) (2) Every person who possesses any controlled substance specified in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

...

(4) Diazepam.

...

(12) Alprazolam.

....

///

1 **REGULATORY PROVISIONS**

2 13. California Code of Regulations, title 16, section 1770, states:

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

8 **COST RECOVERY**

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

15 **DRUGS**

16 15. Alprazolam is a Schedule IV controlled substance as designated by Health and  
17 Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug under  
18 Code section 4022.

19 16. Diazepam is a Schedule IV controlled substance as designated by Health and  
20 Safety Code, section 11057, subdivision (d)(9) and is categorized as a dangerous drug under  
21 Code section 4022.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct – Violation of Drug Laws)**

24 17. Respondent has subjected his Pharmacy Technician Registration to discipline  
25 under Code section 4301, subdivision (j) in that he committed acts that violated statutes of the  
26 State of California regulating controlled substances and dangerous drugs. The circumstances are  
27 as follows:

28 ///

1 a. On January 10, 2016, teenagers in several vehicles were reported driving  
2 up and down Flying Cloud Way in Carlsbad, California. Responding officers from the Carlsbad  
3 Police Department subsequently initiated an enforcement stop. During contact, an officer  
4 immediately smelled marijuana coming from within the vehicle. The driver had no driver's  
5 license. The four passengers included Respondent, who admitted to possession of some  
6 medication. An officer searched Respondent and located a pill bottle inside his jacket pocket  
7 containing 78 pills of antihistamine, eight whole and three half Xanax pills, and 17 Valium pills.  
8 Respondent was arrested for possession of Xanax and Valium without a prescription and  
9 transported to the Vista Detention Facility.

10 b. On March 16, 2016, in a criminal proceeding entitled *The People of the*  
11 *State of California vs. Mario Carmelo Gallardo*, in San Diego County Superior Court (SDCSC),  
12 North County Division, Case Number CN355248, Respondent pled guilty to violating Health  
13 and Safety Code (HSC) section 11375, subdivision (b)(2), possession of designated controlled  
14 substance alprazolam, a misdemeanor. Another misdemeanor charge for violation of HSC  
15 section 11375, subdivision (b)(2), possession of designated controlled substance diazepam, was  
16 dismissed under a plea bargain.

17 c. As a result of Respondent's guilty plea, on March 16, 2016, he was placed  
18 on deferred entry of judgment for a period of 18 months under Penal Code (PC) section 1000.  
19 Respondent was ordered to pay a deferred entry of judgment (DEOJ) administration fee, attend  
20 self-help meetings, attend and successfully complete a County of San Diego PC 1000 program,  
21 submit to a drug test at any time during the DEOJ period, and show proof of DEOJ enrollment,  
22 and completion or progress report when ordered to do so by the SDCSC or the Substance Abuse  
23 Assessment Unit.

24 **SECOND CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – Violation of Pharmacy Laws)**

26 18. Respondent has subjected his Pharmacy Technician Registration to discipline  
27 under Code section 4301, subdivision (o), in that he committed acts that violated pharmacy laws

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1 of the State of California regulating controlled substances and dangerous drugs, as detailed in  
2 paragraph 16. above, and incorporated herein by this reference.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct – Conduct That Would Have Warranted Denial of a License)**

5 19. Respondent subjected his Pharmacy Technician Registration to discipline under  
6 Code section 4301, subdivision (p), in that Respondent possessed controlled substances without a  
7 prescription in violation of Code section 4060, conduct that would have warranted the denial of a  
8 pharmacy technician registration under Code section 480, subdivision (a)(3)(A), as detailed in  
9 paragraph 16, above, and incorporated herein by this reference.

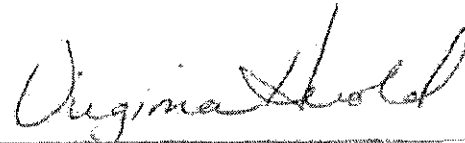
10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration Number TCH  
14 138664, issued to Mario Carmelo Gallardo;
- 15 2. Ordering Mario Carmelo Gallardo to pay the Board of Pharmacy the reasonable  
16 costs of the investigation and enforcement of this case, under Code section 125.3; and,
- 17 3. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: \_\_\_\_\_

9/23/16



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

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28 81450619.doc