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4 **BEFORE THE**
5 **BOARD OF PHARMACY**
6 **DEPARTMENT OF CONSUMER AFFAIRS**
7 **STATE OF CALIFORNIA**

8 In the Matter of the Accusation Against:

Case No. 5924

9 **MICHAEL CHRISTOPHER FLORES**
10 **21254 N. Hwy. 99**
11 **Acampo, CA 95220**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

12 **Pharmacy Technician Registration (TCH)**
13 **No. 133963**

Respondents.

14 FINDINGS OF FACT

15 1. On or about January 10, 2017, Complainant Virginia K. Herold, in her official
16 capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No.
17 5924 against Michael Christopher Flores (Respondent) before the Board of Pharmacy,
18 Department of Consumer Affairs ("Board"). (Accusation attached as Exhibit A.)

19 2. On or about July 24, 2013, the Board issued Pharmacy Technician Registration
20 (TCH) No. 133963 to Respondent. The Pharmacy Technician Registration (TCH) was in full
21 force and effect at all times relevant to the charges brought in Accusation No. 5924 and will
22 expire on February 28, 2017, unless renewed.

23 3. On or about January 23, 2017, Respondent was served by Certified and First Class
24 Mail copies of the Accusation No. 5924, Statement to Respondent, Notice of Defense, Request
25 for Discovery, Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7)
26 and the Board's Disciplinary Guidelines at Respondent's address of record which, pursuant to
27 Business and Professions Code section 4100, is required to be reported and maintained with the
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1 Board. Respondent's address of record was and is:

2 21254 N. Hwy. 99
3 Acampo, CA 95220.

4 4. On or about February 27, 2017, the Board received the Domestic Return Receipt
5 corresponding to its service via certified mail of the aforementioned papers to Respondent's
6 address of record. That receipt was signed by an unknown person, and stated:

7 NOTIFY SENDER OF NEW ADDRESS
8 FLORES, MICHAEL C
9 447 MURILLO DR
10 STOCKTON CA 95207-2226

11 5. On or about April 14, 2017, Respondent was served by Certified and First Class Mail
12 copies of the aforementioned papers addressed as follows:

13 Michael Christopher Flores
14 447 Murillo Drive
15 Stockton, CA 95207-2226

16 6. On or about April 19, 2017, the Board received a copy of the Domestic Return
17 Receipt corresponding to its service via certified mail of the aforementioned papers on
18 Respondent to the 447 Murillo Drive address. That receipt was signed by a certain "James
19 Ward," and indicated that the papers had been delivered on April 18, 2017.

20 7. Service of the Accusation was effective as a matter of law under the provisions of
21 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
22 124.

23 7. To date, the aforementioned documents served by Certified and First Class Mail to
24 both Respondent's address of record and the 447 Murillo Drive address have not been returned by
25 the U.S. Postal Service. Nor has any Notice of Defense been received from the Respondent.
26 Only the aforementioned Domestic Return Receipts have been received.

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

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

1 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
2 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
3 5924.

4 10. California Government Code section 11520(a) states, in pertinent part:

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

8 11. Pursuant to its authority under Government Code section 11520, the Board finds
9 Respondent is in default. The Board will take action without further hearing and, based on the
10 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
11 taking official notice of all the investigatory reports, exhibits and statements contained therein on
12 file at the Board's offices regarding the allegations contained in Accusation No. 5924, finds that
13 the charges and allegations in Accusation No. 5924, are separately and severally, found to be true
14 and correct by clear and convincing evidence.

15 12. Taking official notice of its own internal records, pursuant to Business and
16 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
17 and Enforcement is \$2,647.50 as of June 8, 2017.

18 DETERMINATION OF ISSUES

19 1. Based on the foregoing findings of fact, Respondent Michael Christopher Flores has
20 subjected his Pharmacy Technician Registration (TCH) No. 133963 to discipline.

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

22 3. The Board is authorized to revoke Respondent's Pharmacy Technician Registration
23 (TCH) based upon the following violations alleged in the Accusation which are supported by the
24 evidence contained in the Default Decision Evidence Packet in this case:

25 a. Bus. & Prof. Code § 4301(j) (Unprofessional Conduct/Violation of State Laws
26 Regulating Controlled Substances), in that on or about March 15, 2016, Respondent self-
27 administered cocaine, a controlled substance, in violation of Health and Safety Code § 11550 and
28 Bus. & Prof. Code § 4060;

1 b. Bus. & Prof. Code § 4301(h) (Use of Controlled Substances in a Dangerous or
2 Injurious Manner), in that on or about March 15, 2016, Respondent used cocaine in a manner
3 dangerous or injurious to himself and others; and,

4 c. Bus. & Prof. Code § 4301(o) (Unprofessional Conduct/Violation of the Pharmacy
5 Law), in that Respondent violated state law provisions governing pharmacy when he unlawfully
6 self-administered cocaine as set forth above.

7 ORDER

8 IT IS SO ORDERED that Pharmacy Technician Registration (TCH) No. 133963,
9 heretofore issued to Respondent Michael Christopher Flores, is revoked.

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

14 This Decision shall become effective at 5:00 p.m. on August 2, 2017.

15 It is so ORDERED on July 3, 2017.

16
17 BOARD OF PHARMACY
18 DEPARTMENT OF CONSUMER AFFAIRS
19 STATE OF CALIFORNIA

20 

21 By _____

22 Amy Gutierrez, Pharm.D.

23
24 12597470.DOC
25 DOJ Matter ID:SA2016103066

26 Attachment:
27 Exhibit A: Accusation

Exhibit A

Accusation

(MICHAEL CHRISTOPHER FLORES)

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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. 5924

12 **MICHAEL CHRISTOPHER FLORES**
21254 N. Hwy. 99
13 Acampo, CA 95220

ACCUSATION

14 **Pharmacy Technician Registration**
15 **No. TCH 133963**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

21 2. On or about July 24, 2013, the Board issued Pharmacy Technician Registration
22 Number TCH 133963 to Michael Christopher Flores ("Respondent"). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on February 28, 2017, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 4300 states, in pertinent part:

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

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

6 (1) Suspending judgment.

7 (2) Placing him or her upon probation.

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

9 (4) Revoking his or her license.

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

12 5. Code section 4300.1 states:

13 The expiration, cancellation, forfeiture, or suspension of a board-issued license
14 by operation of law or by order or decision of the board or a court of law, the
15 placement of a license on a retired status, or the voluntary surrender of a license by a
16 licensee shall not deprive the board of jurisdiction to commence or proceed with any
17 investigation of, or action or disciplinary proceeding against, the licensee or to render
18 a decision suspending or revoking the license.

19 **STATUTORY AND REGULATORY PROVISIONS**

20 6. Code section 4301 states, in pertinent part:

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

25 ***

26 (h) The administering to oneself, of any controlled substance, or the use of any
27 dangerous drug or of alcoholic beverages to the extent or in a manner as to be
28 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.

(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

1 abetting the violation of or conspiring to violate any provision or term of this chapter
2 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
3 regulatory agency.

4 7. Code section 4060 states, in pertinent part:

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

17 8. Health and Safety Code section 11550(a) states, in pertinent part:

18 A person shall not use, or be under the influence of any controlled substance
19 that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f)
20 of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision
21 (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified
22 in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of
23 Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when
24 administered by or under the direction of a person licensed by the state to dispense,
25 prescribe, or administer controlled substances. It shall be the burden of the defense to
26 show that it comes within the exception. A person convicted of violating this
27 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not
28 more than one year in a county jail. The court may also place a person convicted
under this subdivision on probation for a period not to exceed five years.

9. Health and Safety Code section 11170 states, "No person shall prescribe, administer,
or furnish a controlled substance for himself."

COST RECOVERY

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

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1 **DRUG**

2 11. *Cocaine* is a Schedule II controlled substance as designated by Health and Safety
3 Code section 11055(b)(6).

4 **FIRST CAUSE FOR DISCIPLINE**

5 (Violation of State Laws Regulating Controlled Substances)

6 12. On or about March 15, 2016, at approximately 06:10 hours, officers with the Lodi
7 Police Department responded to Respondent's report that someone was hiding in the bushes
8 around his residence. The officers did not see anyone near the reported address upon their arrival.
9 When Respondent came out to meet the officers, he had excited, rapid speech and walked at a fast
10 pace. Respondent explained as he walked around outside his apartment that people were hiding in
11 the bushes. One of the officers shone a light into the bushes, but did not see anyone. Respondent
12 took the officer to the back patio of his apartment and told him there were "black dudes" looking
13 into his apartment who were trying to take his patio chairs. The officer observed footprints visible
14 in the condensation on the lawn made by himself and Respondent only. Respondent complained
15 that there were several people outside his apartment trying to enter to steal his belongings. Upon
16 examination, Respondent's pupils appeared dilated, his tongue had a grayish coating, and he
17 admitted that he had used cocaine. Respondent told the officers that there was a handgun inside
18 the apartment that belonged to his roommate. Respondent's roommate was contacted and he
19 informed one of the officers that Respondent knew where his handgun was located. After he had
20 been arrested and while he was being taken to the patrol car, Respondent commented that there
21 were people watching them and looking to get into his apartment. Respondent also stated that
22 there were individuals in three vehicles in a nearby parking lot. Upon closer inspection, the
23 officer found there no one in the vehicles. A blood sample was drawn and Respondent tested
24 positive for cocaine.

25 13. On or about March 25, 2016, the complaint in *People v. Michael Christopher Flores*,
26 Superior Court of California, County of San Joaquin, Case Number LOD-CR-MI-2016-0004441,
27 was filed, alleging Respondent's violation of Health and Safety Code sections 11550(a)
28 (use/under influence of a controlled substance). On or about April 5, 2016, Respondent pled

1 guilty to violating Health and Safety Code section 11550(a), a misdemeanor. Pursuant to Penal
2 Code section 1000, the court granted a deferred entry of judgment for a period of no less than
3 eighteen months nor longer than three years, during which Respondent is to participate in a court-
4 approved program, pay all fines and fees, and meet all other terms and conditions set by the court.
5 Upon his successful completion of the program and satisfaction of all other terms and conditions
6 set by the court, the court will dismiss the charge.

7 14. Respondent is subject to disciplinary action pursuant to Code section 4301(j), on the
8 grounds of unprofessional conduct, in that on or about March 15, 2016, Respondent self-
9 administered cocaine, a controlled substance, in violation of Health and Safety Code
10 Section 11550, and Code section 4060.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Use of Controlled Substances in a Dangerous or Injurious Manner)

13 15. Respondent is subject to disciplinary action pursuant to Code section 4301(h), in that
14 on or about March 15, 2016, Respondent used cocaine in a manner dangerous or injurious to
15 himself and others, as set forth in paragraph 12, above.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Violation of the Pharmacy Law)

18 16. Respondent is subject to disciplinary action pursuant to Code section 4301(o), for
19 unprofessional conduct, in that Respondent violated state law provisions governing pharmacy, as
20 set forth in paragraphs 12 through 14, above.

21 **PRAYER**

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

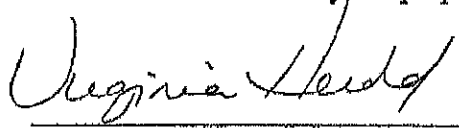
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 133963,
25 issued to Michael Christopher Flores;

26 2. Ordering Michael Christopher Flores to pay the Board of Pharmacy the reasonable
27 costs of the investigation and enforcement of this case, pursuant to Business and Professions
28 Code section 125.3; and,

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

DATED: 1/10/17



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

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