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

In the Matter of the Accusation Against:
JERALD L. NICKELSON
4142 Adams Avenue #201
San Diego, CA 92116

Pharmacist License No. RPH 42174

Respondent.

Case No. 5956
DEFAULT DECISION AND ORDER
[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about August 29, 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. 5956 against Jerald L. Nickelson (Respondent). (A copy of the Accusation is attached as Exhibit A.)
2. On or about August 29, 1988, the Board issued Pharmacist License No. RPH 42174 to Respondent. The Pharmacist License expired on July 31, 2016, and has not been renewed.
3. Section 4300.1 of the Code provides that the expiration or cancellation of a Board-issued license shall not deprive the Board of jurisdiction to commence or proceed with a disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

1 4. On or about September 2, 2016, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 5956, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100 and California Code of Regulations, title 16, section 1704, is required to be reported
6 and maintained with the Board. Respondent's address of record was and is:

7 4142 Adams Avenue #201
8 San Diego, CA 92116

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

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

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

17 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
18 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
19 5956.

20 8. California Government Code section 11520(a) states, in pertinent part:

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

25 9. Pursuant to its authority under Government Code section 11520, the Board finds
26 Respondent is in default. The Board will take action without further hearing and, based on the
27 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
28 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. 5956, finds that
the charges and allegations in Accusation No. 5956, are separately and severally, found to be true
and correct by clear and convincing evidence.

1 10. Taking official notice of its own internal records, pursuant to Business and
2 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
3 and Enforcement is \$517.50 as of October 13, 2016.

4 **DETERMINATION OF ISSUES**

5 1. Based on the foregoing findings of fact, Respondent Jerald L. Nickelson has
6 subjected his Pharmacist License No. RPH 42174 to discipline.

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

8 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacist License
9 based upon the following violations alleged in the Accusation which are supported by the Default
10 Decision Investigatory Evidence Packet in this case.

11 a. Respondent has subjected his pharmacist license to discipline under sections
12 490 and 4301, subdivision (l) of the Code in that on or about June 15, 2016, in a criminal
13 proceeding entitled *People of the State of California v. Jerald Lee Nickelson*, in San Diego
14 County Superior Court, case number SCS285546, Respondent was convicted on his plea of guilty
15 to violating Health and Safety Code section 11379, subdivision (a), transporting a controlled
16 substance for sale, a felony; and Health and Safety Code section 11377, subdivision (a),
17 possession of a controlled substance, a misdemeanor, crimes that are substantially related to the
18 qualifications, duties, and functions of a pharmacist.

19 b. Respondent has subjected his pharmacist license to discipline under section
20 4301, subdivision (f) of the Code in that his conduct involved dishonesty, fraud, deceit or
21 corruption.

22 c. Respondent has subjected his pharmacist license to discipline under section
23 4301, subdivision (j) of the Code in that on or about February 26, 2016, he knowingly violated
24 Health and Safety Code section 11379, subdivision (a), Health and Safety Code section 11377,
25 subdivision (a) when he possessed a controlled substance, and transported a controlled substance
26 for sale.

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ORDER

IT IS SO ORDERED that Pharmacist License No. RPH 42174, heretofore issued to Respondent Jerald L. Nickelson, 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 December 22, 2016.

It is so ORDERED on November 22, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

DOJ Matter ID: SD2016702194

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

(JERALD L. NICKELSON)

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Attorneys for Complainant

8
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. 5956

13 **JERALD L. NICKELSON**
14 **4142 Adams Avenue #201**
San Diego, CA 92116

ACCUSATION

15 **Pharmacist License No. RPH 42174**

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 (Board), Department of Consumer Affairs.
22 2. On or about August 29, 1988, the Board issued Pharmacist License Number RPH
23 42174 to Jerald L. Nickelson (Respondent). The Pharmacist License expired on July 31, 2016,
24 and has not been renewed.

25 **JURISDICTION**

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

1 4. Section 4300, subdivision (a) of the Code states: "Every license issued may be
2 suspended or revoked."

3 5. 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
6 license on a retired status, or the voluntary surrender of a license by a licensee shall not
7 deprive the board of jurisdiction to commence or proceed with any investigation of, or
8 action or disciplinary proceeding against, the licensee or to render a decision suspending
9 or revoking the license.

8 STATUTORY PROVISIONS

9 6. Section 482 of the Code states:

10 Each board under the provisions of this code shall develop criteria to evaluate the
11 rehabilitation of a person when:

12 (a) Considering the denial of a license by the board under Section 480; or

13 (b) Considering suspension or revocation of a license under Section 490.

14 Each board shall take into account all competent evidence of rehabilitation
15 furnished by the applicant or licensee.

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

20 8. Section 493 of the Code states:

21 Notwithstanding any other provision of law, in a proceeding conducted by a board,
22 within the department pursuant to law to deny an application for a license or to suspend
23 or revoke a license or otherwise take disciplinary action against a person who holds a
24 license, upon the ground that the applicant or the licensee has been convicted of a crime
25 substantially related to the qualifications, functions, and duties of the licensee in
26 question, the record of conviction of the crime shall be conclusive evidence of the fact
27 that the conviction occurred, but only of that fact, and the board may inquire into the
28 circumstances surrounding the commission of the crime in order to fix the degree of
29 discipline or to determine if the conviction is substantially related to the qualifications,
30 functions, and duties of the licensee in question.

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

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1 9. Section 4301 of the Code states:

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

6 ...

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

10 ...

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

13 ...

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

23 ...

24 (b) When considering the suspension or revocation of a facility or a personal
25 License on the ground that the licensee or the registrant has been convicted of a crime,
26 the board, in evaluating the rehabilitation of such person and his present eligibility for a
27 license will consider the following criteria:

28 (1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

1 (3) The time that has elapsed since commission of the act(s) or offense(s).

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

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

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

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

10 **COSTS**

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

17 **DRUG**

18 13. Methamphetamine is a Schedule II controlled substance as designated by Health and
19 Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business and
20 Professions Code section 4022.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(June 15, 2016 Criminal Convictions for Transporting a Controlled Substance for Sale**
23 **& Possession of a Controlled Substance on February 26, 2016)**

24 14. Respondent has subjected his license to discipline under sections 490 and 4301,
25 subdivision (I) of the Code in that he was convicted of crimes that are substantially related to the
26 qualifications, duties, and functions of a pharmacist. The circumstances are as follows:

27 a. On or about June 15, 2016, in a criminal proceeding entitled *People of the State*
28 *of California v. Jerald Lee Nickelson*, in San Diego County Superior Court, case number

1 SCS285546, Respondent was convicted on his plea of guilty to violating Health and Safety Code
2 section 11379, subdivision (a), transporting a controlled substance for sale, a felony; and Health
3 and Safety Code section 11377, subdivision (a), possession of a controlled substance, a
4 misdemeanor.

5 b. As a result of the convictions, Respondent was sentenced to serve 180 days in
6 jail, with pre-custody credit for four days. He was granted formal probation for three years, and
7 was ordered to pay fees and fines, and submit to firearms restrictions.

8 c. The facts that led to the convictions are that on the afternoon of February 26,
9 2016, Respondent was entering the United States from Mexico through the pedestrian port of
10 entry in San Ysidro, California. A Customs and Border Security Officer sent Respondent to a
11 secondary inspection area where Respondent gave a Homeland Security Investigations Special
12 Agent (SA) permission to search his belongings. The SA seized approximately 11.8 grams of a
13 crystal-like substance which subsequently tested positive for methamphetamine, which had been
14 secreted inside an allergy pill bottle. Respondent was arrested at his San Diego apartment on
15 March 16, 2016.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Commission of Acts Involving Dishonesty, Fraud, Deceit or Corruption)**

18 15. Respondent has subjected his license to discipline under section 4301, subdivision (f)
19 of the Code in that his conduct, as described in paragraph 15, above, involved dishonesty, fraud,
20 deceit or corruption.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Violation of California Statutes Regulating Controlled Substances)**

23 16. Respondent has subjected his license to discipline under section 4301, subdivision (j)
24 of the Code in that on or about February 26, 2016, he knowingly violated Health and Safety Code
25 section 11379, subdivision (a), Health and Safety Code section 11377, subdivision (a), as
26 described in paragraph 14, above.

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PRAYER

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

1. Revoking or suspending Pharmacist License Number RPH 42174, issued to Jerald L. Nickelson;
2. Ordering Jerald L. Nickelson 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; and,
3. Taking such other and further action as deemed necessary and proper.

DATED:

8/29/16



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

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