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

In the Matter of the Accusation Against:
CHRISTOPHER MATTHEW SMITH
1400 W. Grand Ave., Suite F
Grover Beach, CA 93433

Designated Representative-In-Charge
Certificate No. EXC 22825

Respondent.

Case No. 5995
DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 1, 2017, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5995 against Christopher Matthew Smith (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)
2. On or about July 10, 2014, the Board of Pharmacy (Board) issued Designated Representative-In-Charge Certificate No. EXC 22825 to Respondent. The Designated Representative-In-Charge Certificate expired on July 1, 2016, and has not been renewed.
3. On or about February 22, 2017, Respondent was served by Certified and First Class Mail copies of the Accusation No. 5995, Statement to Respondent, Notice of Defense, Request

1 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
2 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
3 section 4100, is required to be reported and maintained with the Board. Respondent's address of
4 record was and is: 1400 W. Grand Ave., Suite F, Grover Beach, CA 93433.

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

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

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

14 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
15 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
16 5995.

17 7. California Government Code section 11520(a) states, in pertinent part:

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

22 8. Pursuant to its authority under Government Code section 11520, the Board finds
23 Respondent is in default. The Board will take action without further hearing and, based on the
24 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
25 taking official notice of all the investigatory reports, exhibits and statements contained therein on
26 file at the Board's offices regarding the allegations contained in Accusation No. 5995, finds that
27 the charges and allegations in Accusation No. 5995, are separately and severally, found to be true
28 and correct by clear and convincing evidence.

9 Taking official notice of its own internal records, pursuant to Business and
Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
and Enforcement are \$992.50 as of March 29, 2017.

DETERMINATION OF ISSUES

1
2 1. Based on the foregoing findings of fact, Respondent Christopher Matthew Smith has
3 subjected his Designated Representative-In-Charge Certificate No. EXC 22825 to discipline.

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

5 3. The Board of Pharmacy is authorized to revoke Respondent's Designated
6 Representative-In-Charge Certificate based upon the following violations alleged in the
7 Accusation which are supported by the evidence contained in the Default Decision Evidence
8 Packet in this case:

9 a. Business and Professions Code section 4301, subdivision (l), in conjunction with,
10 California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct,
11 in that Respondent was convicted of a crime substantially related to the qualifications, functions,
12 and duties of a designated representative, as follows:

13 i. On or about August 1, 2016, after pleading nolo contendere, Respondent was
14 convicted of one felony count of violating Penal Code section 459 [second degree commercial
15 burglary] and one felony count of violating Penal Code section 22010 [possession of a nunchaku]
16 in the criminal proceeding entitled *The People of the State of California v. Christopher Matthew*
17 *Smith* (Super. Ct. San Luis Obispo County, 2016, No. 16F-06083-B).

18 ii. On or about June 15, 2016, after pleading guilty, the court placed Respondent
19 on three years Deferred Entry of Judgment for violating Health and Safety Code section 11377,
20 subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The*
21 *People of the State of California v. Christopher Matthew Smith* (Super. Ct. San Luis Obispo
22 County, 2016, No. 16M-04269). On or about August 1, 2016, criminal proceedings were
23 reinstated, and Respondent was convicted of one misdemeanor count of violating Health and
24 Safety Code section 11377, subdivision (a).

25 b. Business and Professions Code section 4301, subdivision (f), in that on or about June
26 24, 2016, Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or
27 corruption with the intent to substantially benefit himself, or substantially injure another.

28 ///

1 c. Business and Professions Code section 4301, subdivision (h), on the grounds of
2 unprofessional conduct, in that, on or about April 15, 2016, Respondent by his own admission,
3 used and / or was under the influence of methamphetamine, a controlled substance and/or
4 dangerous drug.

5 d. Business and Professions Code section 4301, subdivision (j) for violating section
6 4060, on the grounds of unprofessional conduct, in that Respondent was found to be in possession
7 of a controlled substance/dangerous drug.

8 ORDER

9 IT IS SO ORDERED that Designated Representative-In-Charge Certificate No. EXC
10 22825, heretofore issued to Respondent Christopher Matthew Smith, is revoked.

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

15 This Decision shall become effective at 5:00 p.m. on June 7, 2017.

16 It is so ORDERED on May 8, 2017.

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

21 

22
23 By _____

Amy Gutierrez, Pharm.D.
Board President

24
25 52434977.DOC
26 DOJ Matter ID:LA2016602805

27 Attachment:
28 Exhibit A: Accusation

Exhibit A

Accusation

(CHRISTOPHER MATTHEW SMITH)

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Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
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300 So. Spring Street, Suite 1702
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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. 5995

13 **CHRISTOPHER MATTHEW SMITH**
14 1400 W. Grand Ave., Suite F
15 Groyer Beach, CA 93433

A C C U S A T I O N

16 Designated Representative Certificate
No. EXC 22825

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 July 10, 2014, the Board issued Designated Representative Certificate
23 Number EXC 22825 to Christopher Matthew Smith (Respondent). The Designated
24 Representative Certificate expired on July 1, 2016, and has not been renewed. The Board
25 cancelled the certificate on January 6, 2017.

26 **JURISDICTION**

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

1 8. Section 4301 states, in pertinent part:

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

5

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

9

10 “(h) The administering to oneself, of any controlled substance, or the use of any
11 dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or
12 injurious to oneself, to a person holding a license under this chapter, or to any other person or to
13 the public, or to the extent that the use impairs the ability of the person to conduct with safety to
14 the public the practice authorized by the license.

15

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

18

19 “(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

8 REGULATORY PROVISIONS

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

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

16 COST RECOVERY

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

23 11. CONTROLLED SUBSTANCE/DANGEROUS DRUG

24 "Methamphetamine," is a schedule II controlled substance as defined in Health and Safety
25 Code section 11055, subdivision (c)(14), and is categorized a dangerous drug pursuant to section
26 4022.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Substantially Related Crime)

3 12. Respondent is subject to disciplinary action under section 4301, subdivision (I), in
4 conjunction with, California Code of Regulations, title 16, section 1770, on the grounds of
5 unprofessional conduct, in that Respondent was convicted of a crime substantially related to the
6 qualifications, functions, and duties of a designated representative, as follows:

7 a. On or about August 1, 2016, after pleading nolo contendere, Respondent was
8 convicted of one felony count of violating Penal Code section 459 [second degree commercial
9 burglary] and one felony count of violating Penal Code section 22010 [possession of a nunchaku]
10 in the criminal proceeding entitled *The People of the State of California v. Christopher Matthew*
11 *Smith* (Super. Ct. San Luis Obispo County, 2016, No. 16F-06083-B). The Court sentenced
12 Respondent to serve 77 days in jail and placed him on 3 years formal probation, with terms and
13 conditions. The circumstances surrounding the conviction are that on or about June 24, 2016, San
14 Luis Obispo County Sheriff's deputies were dispatched to a trespass in progress. When they
15 arrived at the residence, several individuals were detained including Respondent. Respondent
16 was found to be in possession of a nunchaku and a throwing knife. While interviewing
17 Respondent, he indicated that he had gone to the residence looking for an individual who had
18 made threats to him earlier that day.

19 b. On or about June 15, 2016, after pleading guilty, the court placed Respondent on
20 three years Deferred Entry of Judgment for violating Health and Safety Code section 11377,
21 subdivision (a) [possession of a controlled substance] in the criminal proceeding entitled *The*
22 *People of the State of California v. Christopher Matthew Smith* (Super. Ct. San Luis Obispo
23 County, 2016, No. 16M-04269). On or about August 1, 2016, criminal proceedings were
24 reinstated, and Respondent was convicted of one misdemeanor count of violating Health and
25 Safety Code section 11377, subdivision (a). The Court sentenced Respondent to serve 77 days in
26 jail. The circumstances surrounding the conviction are that on or about April 15, 2016, San Luis
27 Obispo County Sheriff's deputies initiated a traffic enforcement stop after observing the vehicle
28 Respondent was driving only had one working headlight. During a search of Respondent's

1 person, deputies found a black cloth bag in his left front pants pocket containing two
2 methamphetamine smoking pipes and several clear zip lock baggies, including one that contained
3 a clear crystalline substance resembling methamphetamine. Respondent admitted to deputies that
4 the clear crystalline substance was methamphetamine and that he had recently smoked
5 methamphetamine.

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Acts Involving Moral turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

8 13. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
9 that on or about June 24, 2016, Respondent committed acts involving moral turpitude, dishonesty,
10 fraud, deceit, or corruption with the intent to substantially benefit himself, or substantially injure
11 another. Complainant refers to, and by reference incorporates, the allegations set forth above in
12 paragraph 12, subparagraph (a), as though set forth fully.

13 **THIRD CAUSE FOR DISCIPLINE**

14 **(Use/Under the Influence of a Controlled Substance and/or Dangerous Drug)**

15 14. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
16 the grounds of unprofessional conduct, in that, on or about April 15, 2016, Respondent by his
17 own admission, used and / or was under the influence of methamphetamine, a controlled
18 substance and/or dangerous drug. Complainant refers to, and by this reference incorporates, the
19 allegations set forth above in paragraph 12, subparagraph (b), as though fully set forth herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Illegal Possession of a Controlled Substance/Dangerous Drug)**

22 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
23 violating section 4060, on the grounds of unprofessional conduct, in that Respondent was found
24 to be in possession of a controlled substance/dangerous drug. Complainant refers to, and by
25 reference incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as
26 though fully set forth herein.

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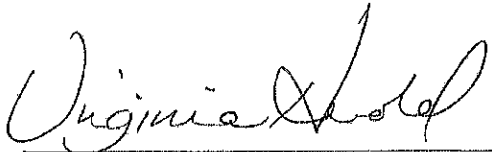
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PRAYER

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 Designated Representative Certificate No. EXC 22825, issued to Christopher Matthew Smith;
2. Ordering Christopher Matthew Smith to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/1/17



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

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