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Attorneys for Complainant

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>ADOLFO B. DOMINGUEZ<br>NORTH KERN STATE PRISON<br>40903 169th Street East<br>Lancaster, CA 93535<br><br>P.O. Box 567<br>Delano, CA 93216-0567<br><br>Pharmacy Technician Registration<br>No. TCH 30828<br><br>Respondent. | Case No. 2909<br><br>OAH No.<br><br>**DEFAULT DECISION AND ORDER**<br><br>[Gov. Code, §11520] |

FINDINGS OF FACT

1. On or about February 5, 2007, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2909 against Adolfo B. Dominguez, North Kern State Prison (Respondent) before the Board of Pharmacy.

2. On or about September 21, 1999, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 30828 to Respondent. The Pharmacy Technician Registration expired on January 31, 2007, and has not been renewed.

3. On or about March 15, 2007, C. Ferracioli, an employee of the Department

of Justice, served by Certified and First Class Mail a copy of the Accusation No. 2909, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 40903 169th Street East, Lancaster, CA 93535. An additional copy of these documents was served at P.O. Box 567 Delano, CA 93216-0567. A copy of the Accusation, the related documents, and Declaration of Service are attached as exhibit A, and incorporated herein by reference.

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

5. Business and Professions Code section 118 states, in pertinent part:

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the license on any such ground."

6. Government Code section 11506 states, in pertinent part:

"(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."

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 2909.

8. California Government Code section 11520 states, in pertinent part:

"(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."

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, finds that the allegations in Accusation No. 2909 are true.

10. The total costs for investigation and enforcement are $9,695 as of March 30, 2007.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Adolfo B. Dominguez, has subjected his Pharmacy Technician Registration No. TCH 30828 to discipline.

2. A copy of the Accusation and the related documents and Declaration of Service are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Business and Professions Code section 4301(j), (l) and (o) (Unprofessional Conduct - Conviction of a Substantially Related Crime.)

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 30828, heretofore issued to Respondent Adolfo B. Dominguez is revoked.

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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 on June 20, 2007.

It is so ORDERED May 21, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

60207751.wpd
DOJ docket number:LA2005600237

Attachments:

Exhibit A: Accusation No.2909, Related Documents, and Declaration of Service

Exhibit A

Accusation No. 2909,
Related Documents and Declaration of Service

EDMUND G. BROWN JR., Attorney General
of the State of California
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**BEFORE THE**
**BOARD OF PHARMACY**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the Accusation Against:<br><br>ADOLFO B. DOMINGUEZ<br>40903 169th Street East<br>Lancaster, CA 93535<br><br>North Kern State Prison<br>P. O. Box 567<br>Delano, CA 93216-0567<br><br>CDC # F49234<br><br>Pharmacy Technician Registration No. TCH 30828<br><br>Respondent. | Case No. 2909<br><br>OAH No.<br><br>**ACCUSATION** |

Complainant alleges:

PARTIES

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

2. On or about September 21, 1999, the Board of Pharmacy issued Original Pharmacy Technician Registration Number TCH 30828 to Adolfo B. Dominguez. The Registration was in full force and effect at all times relevant to the charges brought herein and expired on January 31, 2007.

## JURISDICTION

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

4. Section 4300 permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

5. Section 4301 states, in pertinent part:

"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 of the United States regulating controlled substances and dangerous drugs.

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

. . . .

"(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.

6. Section 118, subdivision (b) states:

"The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

7. Section 490 states:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

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

"For the purpose of denial, suspension, or revocation of a personal or facility

license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, 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."

9. Business and Professions Code section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . 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."

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

10. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivisions (j), (l), and (o), in conjunction with section 490, on the grounds of unprofessional conduct, as defined in California Code of Regulations, title 16, section 1770, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician. The circumstances are that on or about September 13, 2006, Respondent was convicted on a plea of nolo contendere, to one felony count of violating Penal Code section 264.1, (Rape in Concert With Force and Violence), in the Superior Court of the State of California, County of Los Angeles, Case No. MA032181, entitled *The People of the State of California v. Adolfo Bladimir Dominguez.*

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:

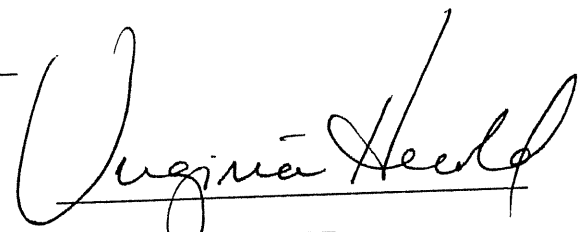
1. Revoking or suspending Original Pharmacy Technician Registration Number TCH 30828, issued to Adolfo B. Dominguez;

2. Ordering Adolfo B. Dominguez to pay the Board of Pharmacy the

reasonable costs of investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 2/5/07



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

Complainant

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EDMUND G. BROWN JR., Attorney General
of the State of California
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Attorneys for Complainant

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

| | |
|---|---|
| In the Matter of the Accusation Against:<br><br>ADOLFO B. DOMINGUEZ<br><br>Respondent. | Case No. 2909<br><br>**STATEMENT TO RESPONDENT**<br><br>[Gov. Code §§ 11504, 11505(b)] |

TO RESPONDENT:

Enclosed is a copy of the Accusation that has been filed with the Board of Pharmacy of the Department of Consumer Affairs (Board), and which is hereby served on you.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Board, represented by Deputy Attorney General Thomas L. Rinaldi, within fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you, you will be deemed to have waived your right to a hearing in this matter and the Board may proceed upon the Accusation without a hearing and may take action thereon as provided by law.

The request for hearing may be made by delivering or mailing one of the enclosed forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code, to:

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**Thomas L. Rinaldi**
**Deputy Attorney General**
**Ronald Reagan Building**
**300 South Spring Street, Suite 1702**
**Los Angeles, CA 90013.**

You may, but need not, be represented by counsel at any or all stages of these proceedings.

The enclosed Notice of Defense, if signed and filed with the Board, shall be deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any objection to the form of the Accusation unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen (15) days after service of the Accusation on you.

If you file any Notice of Defense within the time permitted, a hearing will be held on the charges made in the Accusation.

The hearing may be postponed for good cause. If you have good cause, you are obliged to notify the Office of Administrative Hearings, 320 West Fourth Street, Suite 630, Los Angeles, CA 90013, within ten (10) working days after you discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10) days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are enclosed.

If you desire the names and addresses of witnesses or an opportunity to inspect and copy the items mentioned in section 11507.6 of the Government Code in the possession, custody or control of the Board you may send a Request for Discovery to the above designated Deputy Attorney General.

**NOTICE REGARDING STIPULATED SETTLEMENTS**

It may be possible to avoid the time, expense and uncertainties involved in an administrative hearing by disposing of this matter through a stipulated settlement. A stipulated settlement is a binding written agreement between you and the government regarding the matters

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charged and the discipline to be imposed. Such a stipulation would have to be approved by the Board of Pharmacy but, once approved, it would be incorporated into a final order.

Any stipulation must be consistent with the Board's established disciplinary guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the Board's Disciplinary Guidelines will be provided to you on your written request to the state agency bringing this action.

If you are interested in pursuing this alternative to a formal administrative hearing, or if you have any questions, you or your attorney should contact Deputy Attorney General Thomas L. Rinaldi at the earliest opportunity.

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**DECLARATION OF SERVICE**

(Certified & First Class Mail (separate mailing))

In the Matter of the Penal Code Section 23 Against:

Case No. 2909

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 So. Spring St., Los Angeles, CA 90013

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On March 15, 2007, I served the attached **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; DISCOVERY GOVERNMENT CODE SECTIONS; and NOTICE OF DEFENSE** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **STATEMENT TO RESPONDENT; ACCUSATION; REQUEST FOR DISCOVERY; DISCOVERY GOVERNMENT CODE SECTIONS; and NOTICE OF DEFENSE** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

Adolfo B. Dominguez
40903 - 169th Street East
Lancaster, CA 93535
Respondent

**Certified Article No.**
**7001 0360 0003 6708 9974**

Adolfo B. Dominguez
North Kern State Prison
P.O. Box 567
Delano, CA 93216-0567
Respondent

**Certified Article No.**
**7001 0360 0003 6708 9981**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on March 15, 2007, at Los Angeles, California.

C. Ferracioli
Typed Name

C. Ferracioli
Signature

60203732.wpd

U.S. Postal Service
**CERTIFIED MAIL RECEIPT**
*(Domestic Mail Only; No Insurance Coverage Provided)*

7001 0360 0003 6708 9974

OFFICIAL USE

Postage $

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Re: Adolfo B. Dominguez
Mailed 03/15 /07

Sent To

Street, Apt.
or PO Box

City, State, ZIP+ 4

Adolfo B. Dominguez
40903 -169th Street East
Lancaster, CA 93535

PS Form 3800, January 2001 See Reverse for Instructions

U.S. Postal Service
**CERTIFIED MAIL RECEIPT**
*(Domestic Mail Only; No Insurance Coverage Provided)*

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OFFICIAL USE

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Re: Adolfo B. Dominguez
Mailed 03/15 /07

*Sent To* Adolfo B. Dominguez
North Kern State Prison

*Street, Apt.*
*or PO Box N* P.O. Box 567
Delano, CA 93216-0567

*City, State, ZIP+ 4*

PS Form 3800, January 2001 See Reverse for Instructions