

1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
Supervising Deputy Attorney General  
3 ALVARO MEJIA  
Deputy Attorney General  
4 State Bar No. 216956  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-0083  
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. 4315

13 **ALEXANDER MONDRAGON OGATA**  
11525 McDonald Street  
14 Culver City, CA 90230

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

15 Pharmacy Technician Registration No. TCH 110767

Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 18, 2011, the Board issued Pharmacy Technician Registration No.  
22 TCH 110767 to Alexander Mondragon Ogata (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 September 30, 2014, unless renewed.

25 **JURISDICTION**

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



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

6 . . . .

7 (j) The violation of any of the statutes of this state or of the United States  
8 regulating controlled substances and dangerous drugs.

9 . . . .

10 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
11 abetting the violation of or conspiring to violate any provision or term of this chapter  
12 or of the applicable federal and state laws and regulations governing pharmacy,  
13 including regulations established by the board or by another state or federal  
14 regulatory agency.

15 . . . .

16 9. Section 4022 of the Code states

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

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

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

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

27 10. Section 4059 of the Code, in pertinent part, prohibits furnishing of any dangerous  
28 drug or dangerous device except upon the prescription of an authorized prescriber.

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a  
person upon the prescription of a physician, dentist, podiatrist, or veterinarian, 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, or a physician  
assistant pursuant to Section 3502.1. This section shall not apply to the possession of  
any controlled substance by a manufacturer, wholesaler, pharmacy, physician,  
podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or  
physician assistant, when in stock in containers correctly labeled with the name and  
address of the supplier or producer.

1 Nothing in this section authorizes a certified nurse-midwife, a nurse  
2 practitioner, or a physician assistant to order his or her own stock of dangerous drugs  
3 and devices.

4 12. Health and Safety Code section 11170 provides that "No person shall prescribe,  
5 administer, or furnish a controlled substance for himself."

6 13. Health and Safety Code section 11171 provides that "No person shall prescribe,  
7 administer, or furnish a controlled substance except under the conditions and in the manner  
8 provided by this division."

9 14. Health and Safety Code section 11550, subdivision (a), in pertinent part, makes it  
10 unlawful for any person to use or be under the influence of any controlled substance.

11 15. California Code of Regulations, title 16, section 1769, states:

12 . . . .

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

- 17 (1) Nature and severity of the act(s) or offense(s).
- 18 (2) Total criminal record.
- 19 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 20 (4) Whether the licensee has complied with all terms of parole, probation,  
21 restitution or any other sanctions lawfully imposed against the licensee.
- 22 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

24 For the purpose of denial, suspension, or revocation of a personal or facility  
25 license pursuant to Division 1.5 (commencing with Section 475) of the Business and  
26 Professions Code, a crime or act shall be considered substantially related to the  
27 qualifications, functions or duties of a licensee or registrant if to a substantial degree  
28 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.

24 ///

25 ///

26 ///

27 ///

28 ///

**CONTROLLED SUBSTANCE/DANGEROUS DRUG**

17. Section 4021 of the Code states:

“‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section 1153) of Division 10 of the Health and Safety Code.”

18. Section 4022 of the Code states, in pertinent part:

“‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use, except veterinary drugs that are labeled as such, and including the following:

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

....

“(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.”

19. **Cocaine (and any Cocaine base)** is a narcotic drug according to Health and Safety Code section 11019, subdivision (e). It is a Schedule I controlled substance, as designated in Health and Safety Code section 11054, subdivision (f)(1), and a Schedule II controlled substance, as designated in Health and Safety Code section 11055, subdivision (b)(6). It is categorized as a dangerous drug according to Code section 4022.

**COST RECOVERY**

20. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee 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.

**FACTUAL BACKGROUND**

21. On or about April 21, 2011, officers from the Culver City Police Department responded to a report of a suspicious subject in the area of Stevens Avenue, in Culver City, California. Upon arrival, the officers contacted Respondent and he was positively identified by a homeowner as the suspicious individual that ran from her back yard. Officer Victor was speaking

1 with Respondent, when he spontaneously stated, "I was just walking through the bushes because I  
2 was trying to find my bike." Respondent went on to state that he could not recall where he left  
3 his bicycle and was trying to find any bicycle that he could use to go back home.

4 22. Upon further questioning by the officers, they noticed that Respondent was displaying  
5 objective signs of being under the influence of a controlled substance. In observing Respondent's  
6 behavior, the officers noted that: 1). Respondent's speech was rapid and he constantly licked his  
7 lips as if his mouth was dry; 2). Respondent was continuously shifting his body weight from side  
8 to side as he stood talking to the officers; 3). Respondent had beads of sweat pouring down his  
9 forehead despite the cool weather; 4). Respondent's pulse measured approximately 125 beats per  
10 minute; and 5). During the administration of the Rhomberg stand test, Respondent's eyelids  
11 fluttered rapidly while closed, a symptom often referred to as "eyelid tremors." Respondent  
12 closed his eyes and estimated 30 seconds in what was actually 25 seconds. Officer Grant asked  
13 Respondent when was the last time he used drugs. Respondent stated, "I used cocaine about three  
14 hours ago." Based on the objective symptoms displayed by Respondent, coupled with his  
15 statements, Officer Victor formed the opinion that Respondent was under the influence of a  
16 controlled substance, to wit, a stimulant.

17 23. Upon further questioning of the reporting homeowners, the officers determined that  
18 Respondent stole a red 18-speed "Roadmaster" bicycle worth approximately \$200. Respondent  
19 stated that he had been drinking with a friend that lives on Stevens Avenue the night before the  
20 incident. Respondent explained that he could not remember where he left his bicycle the night  
21 before, so he decided to look in the backyards of nearby houses for his bicycle. Respondent went  
22 on to state that because he could not find his own bicycle, he took the victim's red bicycle in  
23 order for him to get home. Respondent was placed under private person's arrest for violating  
24 Penal Code section 484, subdivision (a).

25 24. Upon arrival at the Culver City Police Department, Officer Victor conducted a  
26 secondary examination of Respondent under controlled lighting to determine if he was under the  
27 influence of a controlled substance. Officer Victor applied the outer beam of his handheld  
28 flashlight to Respondent's eyes and noticed that they measured approximately 6.5 mm to 7.0 mm

1 and had little to no reaction to the application of light. Respondent closed his eyes and estimated  
2 30 seconds to himself, in what was actually 20 seconds. Respondent's pulse measured  
3 approximately 140 beats per minute. Respondent submitted to a urine screening test to determine  
4 the presence of controlled substances. On May 5, 2011, the screen test results of Respondent's  
5 submitted urine sample indicated the presence of amphetamines, cannabinoids, and cocaine.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct – Self-Administration of Controlled Substance(s))**

8 25. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)  
9 and/or Code section 4301, subdivisions (j) and/or (o), in conjunction with Health and Safety Code  
10 section 11170, in that Respondent administered controlled substance(s) to himself. Complainant  
11 refers to and by this reference incorporates the allegations set forth above in paragraphs 21  
12 through 24, inclusive, as though set forth fully.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Unprofessional Conduct – Furnishing of Controlled Substance(s))**

15 26. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)  
16 and/or (o), and/or Code section 4059, in conjunction with Health and Safety Code section 11170,  
17 in that Respondent furnished to himself or another without a valid prescription, and/or conspired  
18 to furnish, and/or assisted or abetted furnishing of, controlled substance(s). Complainant refers to  
19 and by this reference incorporates the allegations set forth above in paragraphs 21 through 24,  
20 inclusive, as though set forth fully.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct – Use/Influence of Controlled Substance(s))**

23 27. Respondent is subject to disciplinary action under Code section 4301, subdivisions (j)  
24 and/or (o), in conjunction with Health and Safety Code section 11550, in that Respondent used  
25 and/or was under the influence of, conspired to use/be under the influence of, and/or assisted in or  
26 abetted use/being under the influence of, controlled substance(s). Complainant refers to and by  
27 this reference incorporates the allegations set forth above in paragraphs 21 through 24, inclusive,  
28 as though set forth fully.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 28. Respondent is subject to disciplinary action under Code section 4301, subdivision (f),  
4 on the grounds of unprofessional conduct, in that Respondent committed acts involving moral  
5 turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by this reference  
6 incorporates the allegations set forth above in paragraphs 20 through 23, inclusive, as though set  
7 forth fully.

8 **PRAYER**

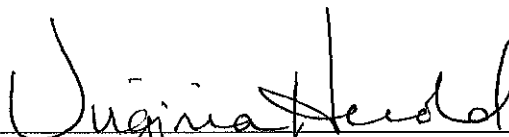
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 110767,  
12 issued to Alexander Mondragon Ogata;

13 2. Ordering Alexander Mondragon Ogata to pay the Board of Pharmacy the reasonable  
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
15 Code section 125.3;

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

17  
18 DATED: 12/12/13



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

25  
26  
27 DOJ Matter ID: LA2012506949  
28 51400666.docx