

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
Supervising Deputy Attorney General
3 CHRISTINE J. LEE
Deputy Attorney General
4 State Bar No. 282502
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2539
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:

13 **MARTIN MENDIZABAL**
17052 Woodruff Ave.
Bellflower, CA 90706

14 **Pharmacy Technician Registration No. TCH 21295**

15 Respondent.

Case No. 4449

A C C U S A T I O N

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 3, 1997, the Board of Pharmacy issued Pharmacy Technician
21 Registration No. TCH 21295 to Martin Mendizabal (Respondent). The Pharmacy Technician
22 Registration was in full force and effect at all times relevant to the charges brought herein and
23 will expire on April 30, 2014, unless renewed.

24 **JURISDICTION**

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

28 ///

1 STATUTORY PROVISIONS

2 4. Section 490 of the Code states, in pertinent part:

3 "(a) In addition to any other action that a board is permitted to take against a licensee, a
4 board may suspend or revoke a license on the ground that the licensee has been convicted of a
5 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
6 or profession for which the license was issued."

7 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
8 discipline a licensee for conviction of a crime that is independent of the authority granted under
9 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
10 of the business or profession for which the licensee's license was issued."

11 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
12 conviction following a plea of nolo contendere. Any action that a board is permitted to take
13 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
14 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
15 made suspending the imposition of sentence, irrespective of a subsequent order under the
16 provisions of Section 1203.4 of the Penal Code."

17 5. Section 493 of the Code states:

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

28 ///

1 6. Section 4300 of the Code provides in pertinent part, that every license issued by the
2 Board is subject to discipline, including suspension or revocation.

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

9 8. Section 4301 of the Code states, in pertinent part:

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

13

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

19

20 "(k) The conviction of more than one misdemeanor or any felony involving the use,
21 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
22 combination of those substances.

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

1 The board may inquire into the circumstances surrounding the commission of the crime, in order
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
6 of this provision. The board may take action when the time for appeal has elapsed, or the
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
11 indictment.

12 **REGULATORY PROVISIONS**

13 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

20 **COST RECOVERY**

21 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
22 administrative law judge to direct a licensee found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 ///

26 ///

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Conviction of a Substantially Related Crime)**

3 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
4 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
5 that Respondent has been convicted of a crime substantially related to the qualifications,
6 functions or duties of a pharmacy technician.

7 a. On or about May 8, 2012, after pleading nolo contendere, Respondent was convicted
8 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
9 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
10 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2012,
11 No. 2WW00240). The Court sentenced Respondent to serve 120 days in Los Angeles County Jail
12 and placed him on 3 years probation, with terms and conditions.

13 b. The circumstances surrounding the conviction are that on or about July 22, 2011,
14 California Highway Patrol stopped Respondent for a traffic enforcement stop. While speaking to
15 Respondent, the officer detected an odor of an alcoholic beverage emitted from within the vehicle
16 and his person. Respondent was observed to have bloodshot and watery eyes and slurred speech.
17 Respondent admitted that he drank two beers. Respondent submitted to a blood test resulting in a
18 blood-alcohol content level of 0.19%.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Conviction of a Substantially Related Crime)**

21 12. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
22 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
23 that Respondent has been convicted of a crime substantially related to the qualifications,
24 functions or duties of a pharmacy technician.

25 a. On or about May 18, 2006, after pleading nolo contendere, Respondent was convicted
26 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
27 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
28 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2006,

1 No. 6BF01341). The Court sentenced Respondent to serve 96 hours in Los Angeles County Jail
2 and placed him on 48 months probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about January 22, 2006,
4 Respondent drove a vehicle while having 0.29% of alcohol in his blood.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Conviction of a Substantially Related Crime)**

7 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
8 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
9 that Respondent has been convicted of a crime substantially related to the qualifications,
10 functions or duties of a pharmacy technician.

11 a. On or about February 19, 2003, after pleading nolo contendere, Respondent was
12 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
13 [driving under the influence of alcohol or drugs] in the criminal case entitled *The People of the*
14 *State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2003, No. M886866).
15 The Court placed Respondent on 5 years probation, with terms and conditions.

16 b. The circumstances surrounding the conviction are that on or about January 17, 2003,
17 Respondent drove a vehicle while having 0.27% of alcohol in his blood.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Dangerous Use of Alcohol)**

20 14. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
21 Code in that Respondent used alcoholic beverages to an extent or in a manner dangerous or
22 injurious to himself, another person, or the public. Complainant refers to, and by this reference
23 incorporates, the allegations set forth above in paragraphs 11 through 13, inclusive, as though set
24 forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Convictions of Crimes Involving the Consumption of Alcohol)**

27 15. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
28 Code, in that Respondent was convicted of crimes involving the consumption of alcohol or drugs.

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraphs 11 through 13, inclusive, as though set forth fully.

3 **DISCIPLINARY CONSIDERATIONS**

4 16. In order to determine the degree of discipline, if any to be imposed on Respondent,
5 Complainant alleges the following:

6 a. On or about August 30, 1999, after pleading nolo contendere, Respondent was
7 convicted of one misdemeanor count of violating Penal Code section 243, subdivision (e)(1)
8 [battery] in the criminal case entitled *The People of the State of California v. Martin Mendizabal*
9 (Super. Ct. Los Angeles County, 1999, No. 9LC02037). The Court sentenced Respondent to
10 serve 4 days in Los Angeles County Jail and placed him on 3 years probation, with terms and
11 conditions.

12 b. On or about July 22, 1992, after pleading nolo contendere, Respondent was convicted
13 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
14 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
15 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 1992,
16 No. 92M06771). The Court placed Respondent on 36 months probation, with terms and
17 conditions.

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

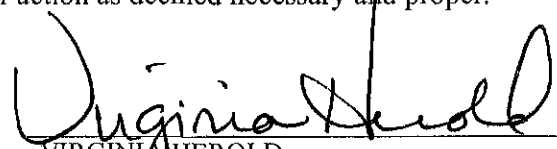
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 21295, issued to Martin Mendizabal;
2. Ordering Martin Mendizabal to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

3/11/14



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

LA2012508139
51354164.doc
12/18/13