

1 KAMALA D. HARRIS  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 MICHAEL BROWN  
Deputy Attorney General  
4 State Bar No. 231237  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2095  
6 Facsimile: (213) 897-2804  
E-mail: MichaelB.Brown@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4733

12 **YADIRA ISABEL DURAN**  
13 **680 Evergreen Lane, #20**  
**Port Hueneme, CA 93041**

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

14 **Pharmacy Technician Registration No. TCH**  
15 **56087**

16 Respondent.

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.

21 2. On or about April 20, 2004, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 56087 to Yadira Isabel Duran (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on March 31, 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 unless otherwise indicated.

1           4.    Section 118, subdivision (b), of the Code provides that the  
2 suspension/expiration/surrender/cancellation of a license shall not deprive the  
3 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period  
4 within which the license may be renewed, restored, reissued or reinstated.

5           5.    Section 490 of the Code states:

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

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

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

20          "(d) The Legislature hereby finds and declares that the application of this section has been  
21 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
22 554, and that the holding in that case has placed a significant number of statutes and regulations  
23 in question, resulting in potential harm to the consumers of California from licensees who have  
24 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
25 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
26 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change  
27 to, but rather are declaratory of, existing law."

28        ///

1           6.     Section 492 states:

2           "Notwithstanding any other provision of law, successful completion of any diversion  
3 program under the Penal Code, or successful completion of an alcohol and drug problem  
4 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of  
5 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
6 commencing with Section 500) of this code, or any initiative act referred to in that division, from  
7 taking disciplinary action against a licensee or from denying a license for professional  
8 misconduct, notwithstanding that evidence of that misconduct may be recorded in a record  
9 pertaining to an arrest. This section shall not be construed to apply to any drug diversion program  
10 operated by any agency established under Division 2 (commencing with Section 500) of this code,  
11 or any initiative act referred to in that division."

12           7.     Section 493 of the Code states:

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

22           "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

23           8.     Section 4060 states, in pertinent part:

24           "No person shall possess any controlled substance, except that furnished to a person upon  
25 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
26 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
27 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
28 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a

1 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the  
2 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,  
3 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-  
4 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
5 with the name and address of the supplier or producer. "

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

8 10. Section 4300.1 of the Code states:

9 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
10 operation of law or by order or decision of the board or a court of law, the placement of a license  
11 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
12 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
13 proceeding against, the licensee or to render a decision suspending or revoking the license."

14 11. Section 4301 of the Code states:

15 "The board shall take action against any holder of a license who is guilty of unprofessional  
16 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

17 Unprofessional conduct shall include, but is not limited to, any of the following:

18 ...

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

22 ...

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

28 ...

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

3 “(l) The conviction of a crime substantially related to the qualifications, functions, and  
4 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
5 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
6 substances or of a violation of the statutes of this state regulating controlled substances or  
7 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
8 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
9 The board may inquire into the circumstances surrounding the commission of the crime, in order  
10 to fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
11 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
12 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
13 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
14 of this provision. The board may take action when the time for appeal has elapsed, or the  
15 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
16 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
17 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
18 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
19 indictment.

20 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
21 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
22 federal and state laws and regulations governing pharmacy, including regulations established by  
23 the board or by any other state or federal regulatory agency.”

### 24 **REGULATORY PROVISIONS**

25 12. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

4 **HEALTH AND SAFETY CODE SECTIONS**

5 13. Health and Safety Code section 11170, states:

6 "No person shall prescribe, administer, or furnish a controlled substance for himself."

7 14. Health and Safety Code section 11550(a), states:

8 "No person shall use, or be under the influence of any controlled substance which is (1)  
9 specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
10 specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified  
11 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)  
12 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in  
13 Schedule III, IV, or V, except when administered by or under the direction of a person licensed by  
14 the state to dispense, prescribe, or administer controlled substances."

15 **COST RECOVERY**

16 15. Section 125.3 of the Code states, in pertinent part, that the Board may request the  
17 administrative law judge to direct a licentiate found to have committed a violation or violations of  
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
19 enforcement of the case.

20 **CONTROLLED SUBSTANCE**

21 a. Methamphetamine is a Schedule II controlled substance as designated by Health and  
22 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to  
23 Business and Professions Code section 4022.

24 b. Marijuana (Cannabis) is a hallucinogenic Schedule I controlled substance as defined  
25 in Health and Safety Code section 11054(d)(13) and a dangerous drug according to Business and  
26 Professions Code section 4022.

27 ///

28 ///

1 **FIRST CAUSE FOR DISCIPLINE**

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

3 16. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
4 (l), of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that  
5 Respondent was convicted of crimes substantially related to the qualifications, functions or duties  
6 of a licensed pharmacy technician, as follows:

7 a. On or about September 27, 2011, after a plea of nolo contendere, Respondent was  
8 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
9 [driving under the influence of alcohol/drugs] with special allegation of Vehicle Code section  
10 23572, subdivision (a) [minor passenger in vehicle], and one misdemeanor count of violating  
11 Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater  
12 than or equal to .08%] with special allegation of Vehicle Code section 23572, subdivision (a)  
13 [minor passenger in vehicle], in the criminal proceeding entitled *People of the State of California*  
14 *v. Yadira Duran* (Super. Ct. Ventura County, 2010, No. 2010033054). Respondent was sentenced  
15 to 6 days in jail, ordered to pay a fine and placed on formal probation for a period of 36 months  
16 with terms and conditions.

17 b. The circumstances surrounding the conviction are that on or about September 3, 2010,  
18 Oxnard Police Officer Currie was dispatched to an injury collision. Upon Officer Currie arrival to  
19 the location, Officer Currie observed a white Toyota with damage on the driver's side and a gray  
20 Nissan Altima with front-end damage to the driver's side. Officer Currie contacted Respondent  
21 and her daughter was standing beside her. Officer Currie noticed that Respondent eyelids closed  
22 slowly and her eyes were dilated, red, watery and droopy. Also, Officer Currie observed  
23 Respondent was holding herself against the rear trunk of her vehicle as if she could not keep her  
24 balance. Officer Currie conducted a seven-step drug abuse recognition evaluation and a series of  
25 field sobriety tests on Respondent. Due to the results of Officer Currie's seven-step drug abuse  
26 recognition evaluation and Respondent's performance on the field sobriety tests, Officer Currie  
27 arrested Respondent for violation of Vehicle Code section 23152, subdivision (a) [driving under  
28 the influence of alcohol/drugs] and Penal Code section 273a, subdivision (b) [child

1 endangerment]. Respondent was transported to the Ventura County Medical Center for medical  
2 treatment and a voluntary blood test. Respondent's toxicology report tested positive for  
3 methamphetamine and cannabinoids. Respondent admitted to Officer Currie that she smoked a  
4 marijuana joint on the morning of her arrest.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Dangerous Use of Drug)**

7 17. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the  
8 Code in that she used dangerous drugs or alcoholic beverages to the extent or in a manner as to be  
9 dangerous or injurious to herself or to the public. Complainant refers to, and by this reference  
10 incorporates, the allegations set forth in paragraph 12, subparagraphs (a) and (b), as though set  
11 forth fully.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Unlawful Possession of a Controlled Substance)**

14 18. Respondent is subject to disciplinary action under section 4301, subdivision (f), (j)  
15 and (o) of the Code for violating section 4060, on the grounds of unprofessional conduct, in that  
16 Respondent was found to be in possession of a controlled substance. Complainant refers to, and  
17 by this reference incorporates, the allegations set forth in paragraph 12, subparagraph (b), as  
18 though set forth fully.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Unlawful Self-Furnishing of Controlled Substances)**

21 19. Respondent is subject to disciplinary action under section 4301, subdivision (j) and  
22 (o) of the Code for violating Health and Safety Code section 11170, on the grounds of  
23 unprofessional conduct, in that Respondent prescribe, administer, or furnish a controlled  
24 substance for herself. Complainant refers to, and by this reference incorporates, the allegations  
25 set forth in paragraph 12, subparagraph (b), as though set forth fully

26 **PRAYER**

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



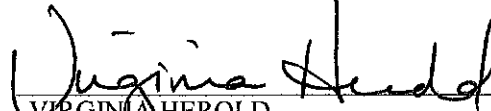
1           1.    Revoking or suspending Pharmacy Technician Registration Number TCH 56087,  
2 issued to Yadira Isabel Duran;

3           2.    Ordering Yadira Isabel Duran to pay the Board of Pharmacy the reasonable costs of  
4 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
5 125.3; and

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

7  
8 DATED:

3/15/14



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

11 LA2013509622  
12 51409357.doc