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

In the Matter of the Accusation Against: **RAQUEL CABRERA** **4560 North Avenue #1** **San Diego, CA 92116** **Pharmacy Technician Registration** **No. TCH 92497** Respondent.	Case No. 5681 **A C C U S A T I O N**

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 March 22, 2010, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 92497 to Raquel Cabrera (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

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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 (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

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

8. Section 4301 of the Code states:

> 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:

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

(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. . . .

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1769, subdivision (b) states:

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

10. 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.

COSTS

11. Section 125.3 of the Code provides, in pertinent part, that 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(August 18, 2015 Criminal Convictions for DUI & Felony Child Abuse on April 28, 2015)

12. Respondent has subjected her license to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about August 18, 2015, in a criminal proceeding entitled *People of the State of California v. Raquel Cabrera,* in San Diego County Superior Court, case number SCD262027, Respondent was convicted on her plea of guilty to violating Penal Code section 273a, subdivision (a), felony child abuse, and Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol/drugs, with a prior DUI within the previous 10 years, a misdemeanor. Respondent admitted and the court found true the special allegation that her blood alcohol concentration (BAC) was .15 percent or more, within the meaning of Vehicle Code section 23578. Pursuant to a plea agreement, the court dismissed an additional count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or more.

b. As a result of the conviction, Respondent was sentenced to serve 180 days in jail, stayed pending successful completion of an outpatient treatment program. Respondent was granted formal probation for five years, and ordered to complete a Multiple Conviction Program and a 52-week Child Abuse Program. Respondent was ordered to complete all testing, assessment, and treatment programs as directed by her probation officer, and comply with felony probation terms as to alcohol and drug conditions, associations, reporting, and payment of fees, fines, and restitution.

c. The facts that led to the convictions are that on or about the evening of April 28, 2015, the San Diego Police Department was dispatched to a report of a possible drunk driver who collided with a signal light pole, and left the scene with two young children in the car. Respondent then drove westbound in the eastbound lanes of traffic, and eventually stopped approximately four blocks from the initial collision scene. Due to her complaints of pain, Respondent was transported by paramedics to a trauma center. Upon arrival at the hospital, the officer observed that Respondent's eyes were bloodshot and watery, her face and jaw were lax, her speech was slurred, and she had an odor of alcohol on her breath. Respondent told the officer that she regularly used Valium, and that she had taken "buzinga" that evening. A trauma nurse stated that Respondent was trying to say "Vicodin." The officer observed the odor of marijuana on Respondent's clothing. Respondent was uncooperative with the field sobriety tests. Based on her objective symptoms of intoxication, the officer arrested Respondent for driving under the influence of alcohol and/or drugs, and placing her children in danger. A blood sample taken from Respondent was subsequently analyzed with a BAC of .33 percent. Respondent's two children, seven and four years old, were held at the scene until a family member took custody.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

13. Respondent has subjected her license to discipline under section 4301, subdivision (h) of the Code in that she used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself and to the public, in that she operated a motor vehicle on April 28, 2015 while significantly impaired by alcohol, with her two minor children in the vehicle, and caused a collision, as described in paragraph 12, above.

DISCIPLINARY CONSIDERATIONS

14. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant to California Code of Regulations, title 16, section 1769, Complainant alleges:

a. On or about January 9, 2006, in a criminal proceeding entitled *People of the State of California v. Raquel Cabrera,* in San Diego County Superior Court, case number C256353, Respondent was convicted on her plea of guilty to violating Vehicle Code section

23152, subdivision (a), driving under the influence of alcohol/drugs. Pursuant to a plea agreement, the court dismissed an additional count of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or more.

b. As a result of the conviction, Respondent was sentenced to serve 180 days in jail, stayed pending successful completion of five years summary probation. Respondent was ordered to complete a three-month First Conviction Program and a MADD Victim Impact Panel session, pay fees and fines, and comply with probation terms.

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 Pharmacy Technician Registration Number TCH 92497, issued to Raquel Cabrera;

2. Ordering Raquel Cabrera to pay the Board of Pharmacy the reasonable costs of the 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: 12/22/15

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

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