

1 XAVIER BECERRA
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 PATRICIA WEBBER HEIM
Deputy Attorney General
4 State Bar No. 230889
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5263
Facsimile: (916) 322-8288
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. 6122

12 **MELISSA ANN LOPEZ**
13 **1044 S. Rio Linda**
Visalia, CA 93292

ACCUSATION

14 **Pharmacy Technician Registration No.**
15 **TCH 145658**

Respondent.

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17
18 Virginia Herold (Complainant) alleges:

19 **PARTIES**

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

22 2. On or about November 10, 2015, the Board issued Pharmacy Technician Registration
23 Number TCH 145658 to Melissa Ann Lopez (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 expired on July 31, 2017, unless renewed.

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1 **JURISDICTION AND STATUTORY PROVISIONS**

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

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

9 5. Section 4300 of the Code states:

10 (a) Every license issued may be suspended or revoked.

11 (b) The board shall discipline the holder of any license issued by the board,
12 whose default has been entered or whose case has been heard by the board and found
guilty, by any of the following methods:

13 (1) Suspending judgment.

14 (2) Placing him or her upon probation.

15 (3) Suspending his or her right to practice for a period not exceeding one year.

16 (4) Revoking his or her license.

17 (5) Taking any other action in relation to disciplining him or her as the board in
18 its discretion may deem proper

19 6. Section 4300.1 of the Code states:

20 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
21 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
22 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
23 a decision suspending or revoking the license.

24 7. Section 4301 of the Code states, in pertinent part:

25 The Board shall take action against the holder of a license who is guilty of
unprofessional conduct or whose license is issued by mistake. Unprofessional
26 conduct shall include, but it not limited to, any of the following:

27 . . .

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

4 ...

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

10 ...

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

14 (l) The conviction of a crime substantially related to the qualifications, functions, and
15 duties of a licensee under this chapter. The record of conviction of a violation of
16 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code
17 regulating controlled substances or dangerous drugs shall be conclusive evidence of
18 unprofessional conduct. In all other cases, the record of conviction shall be
19 conclusive evidence only of the fact that the conviction occurred. The board may
20 inquire into the circumstances surrounding the commission of the crime, in order to
21 fix the degree of discipline or, in the case of a conviction not involving controlled
22 substances or dangerous drugs, to determine if the conviction is of an offense
23 substantially related to the qualifications, functions, and duties of a licensee under this
24 chapter. A plea of nolo contendere is deemed to be a conviction within the meaning
25 of this provision. The board may take action when the time for appeal has elapsed, or
26 the judgment of conviction is confirmed on appeal or when an order granting
27 probation is made suspending the imposition of sentence, irrespective of a subsequent
28 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.

...

COST RECOVERY

8. 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.

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1 **BACKGROUND INFORMATION**

2 **Pre-Licensure Conviction**

3 9. On or about April 11, 2011, in a prior criminal proceeding entitled
4 *People v. Melissa Ann Lopez* in Tulare Superior Court, Case Number TCM250424, Respondent
5 was convicted for violating Vehicle Code section 23152, subdivision (b) (driving under the
6 influence of drugs or alcohol), a misdemeanor and was granted 60 months summary probation,
7 ordered to serve 6 days in county jail, pay all fines, fees, and restitution, and complete a first-
8 offender nine month DUI program. The circumstances were as follows:

9 A. On or about February 27, 2011, a Visalia City Police Department officer was
10 dispatched to a traffic accident, and observed Respondent sitting in the driver's seat of a vehicle,
11 displaying symptoms consistent with intoxication. Respondent admitted consuming "more than
12 25" alcoholic beverages and was arrested for violation of Vehicle Code section 23152,
13 subdivisions (a) (driving under the influence of alcohol/drugs) and (b) (having a blood alcohol
14 content of .08% or above). Respondent refused to perform field sobriety tests and was ordered to
15 provide a blood test, which revealed positive results for the use of Cannabinoids and a blood
16 alcohol concentration of .21%. Respondent failed multiple times to enroll and complete the DUI
17 program, and complete her jail sentence, therefore, her probation was revoked and modified on
18 March 24, 2015. As a result of Respondent's probation modification, the court ordered her to
19 serve 30 days in county jail, suspended pending completion of the DUI program, and ordered to
20 re-enroll in the 9-month DUI program by April 23, 2015.

21 **License Application**

22 10. On or about November 19, 2014, the Board received Respondent's application for
23 registration as a pharmacy technician, signed by Respondent under penalty of perjury on October
24 31, 2014. Respondent marked "no" to question number 7, which states:

25 "Have you ever been convicted of any crime in any state, the USA and its territories,
26 military court or foreign country?"

27 11. On or about August 5, 2015, the Board approved Respondent's application for
28 registration as a pharmacy technician.

1 **Letter of Admonishment**

2 12. Following issuance of Respondent's license, on or about December 2, 2015, pursuant
3 to Code section 4315, the Board sent a Letter of Admonishment to Respondent. The letter
4 notified Respondent that the letter was being issued to her due to the Board's findings of causes
5 for denial of licensure under Code section 480, subdivisions (a)(1) and (a)(3)(A) based on
6 Respondent's April 11, 2011 conviction, her related admissions regarding the consumption of
7 alcohol and her positive test results for use of cannabinoids and alcohol, as described above in
8 paragraph 9, and under Code section 480(d), based on Respondent's failure to disclose her April
9 11, 2011 conviction on her application, as described above in paragraph 10.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Criminal Convictions Substantially Related to the Qualifications,
12 Functions, and Duties of a Licensee)**

13 13. Respondent is subject to discipline pursuant to Code section 4301, subdivision (l), on
14 the grounds of unprofessional conduct, in that Respondent was convicted of criminal offenses
15 substantially related to the qualifications, functions, and duties of a licensee, as follows:

16 A. On or about March 28, 2017, in the case titled *People v. Melissa Ann Lopez*,
17 Tulare County Superior Court Case number VCM341067, Respondent pled nolo contendere and
18 was convicted of Vehicle Code section 23152, subdivision (b) (driving under the influence of
19 drugs or alcohol with a BAC over .08% with prior(s)) a misdemeanor. As a result of her
20 conviction, Respondent was granted a 48 month probation, and ordered to serve 45 days in county
21 jail, with credit for one day, payment of all fines and fees, and attend and successfully complete
22 an 18-month multiple DUI offender program. The circumstances of the crime were as follows:

23 1. On or about May 6, 2016, Visalia Police Officer OS responded to an
24 injury crash in which subjects, including Respondent, were seen running from the vehicle
25 involved. Officer OP made contact with Respondent and notified Stephens that Respondent was
26 possibly the driver and was very intoxicated. Officer OL arrived on scene, where the subject
27 vehicle faced eastbound as the front bumper collided into the rear bumper of vehicle parked on
28

1 the curb. Various officers arrived at the scene and questioned Respondent and her passenger.
2 OP and OS observed Respondent to have slurred speech, unsteady gait, an odor of alcohol
3 emitting from her person, and red watery eyes. Respondent was not wearing shoes, was wearing
4 black socks, and was dirty as if she fell in the mud. Respondent admitted to OS that she drove the
5 vehicle, drank approximately 12 ounces of Fireball starting at 7:00 p.m. until approximately 11:30
6 p.m., and smoked marijuana. Respondent admitted to officers that she was on DUI probation,
7 failed field sobriety tests, and stated she would comply with preliminary alcohol screening and
8 chemical testing, but preliminary alcohol screening could not be performed. Chemical testing,
9 specifically a blood sample, resulted in a BAC of .19%, and showed the presence of
10 Cannabinoids.

11 B. On or about March 28, 2017, in the companion case titled *People v. Melissa*
12 *Ann Lopez*, Tulare County Superior Court Case number VCM348043, Respondent pled nolo
13 contendere and was convicted of Vehicle Code section 14601.2, subdivision (a), driving while
14 license is suspended for DUI, a misdemeanor. As a result of her conviction, Respondent was
15 granted a 24 month summary probation, and ordered to serve 10 days in county jail, with credit
16 for 1 day, payment of all fines and fees – suspended upon successful completion of probation – to
17 be served concurrently with Case number VCM341067. The circumstances of the crime were as
18 follows:

19 1. On or about December 28, 2015, Respondent was cited for driving a
20 motor vehicle on the highway at a time when her driving privilege was suspended and revoked for
21 DUI, and when she had knowledge of the suspension and revocation of her driving privileges.

22 **SECOND CAUSE FOR DISCIPLINE**

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

24 14. Respondent is subject to discipline pursuant to Code section 4301, subdivision (f), on
25 the grounds of unprofessional conduct, in that she committed acts involving dishonesty, fraud,
26 deceit, and/or corruption, as more particularly set forth in paragraph 13 A. above.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Use of Alcohol and/or Dangerous Drugs to an Extent or in a Manner**
3 **Dangerous or Injurious to Oneself or Others)**

4 15. Respondent is subject to discipline pursuant to Code section 4301, subdivision (h), on
5 the grounds of unprofessional conduct, in that Respondent used alcohol and cannabinoids to the
6 extent or in a manner as to be dangerous or injurious to herself or others, as set forth in paragraph
7 13 above.

8 **FOURTH CAUSE FOR DISCIPLINE**

9 **(Multiple Misdemeanor Convictions)**

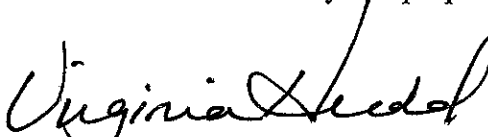
10 16. Respondent is subject to discipline pursuant to Code section 4301, subdivision (k), on
11 the grounds of unprofessional conduct, in that Respondent has been convicted of more than one
12 misdemeanor involving the use, consumption, or self-administration of any dangerous drug or
13 alcoholic beverage, as set forth in paragraphs 9 and 13 above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Pharmacy issue a decision.

- 17 1. Revoking or suspending Pharmacy Technician Registration Number TCH 145658,
18 issued to Melissa Ann Lopez
- 19 2. Ordering Melissa Ann Lopez to pay the Board of Pharmacy the reasonable costs of
20 the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3; and
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: 8/29/17


25 VIRGINIA HEROLD
26 Executive Officer
27 Board of Pharmacy
28 Department of Consumer Affairs
State of California
Complainant

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