

1 XAVIER BECERRA
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 879-0982
Facsimile: (510) 622-2270
7 E-mail: Nicholas.Tsukamaki@doj.ca.gov
Attorneys for Complainant Petitioner

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

11
12 In the Matter of the Petition to Revoke
Probation Against:
13 **ENRIQUE RODRIGUEZ**
14 **1737 Via Lacqua**
San Lorenzo, CA 94580
15 **Pharmacy Technician Registration No. TCH**
16 **72559**
17 Respondent.

Case No. 6163
PETITION TO REVOKE PROBATION

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19 Complainant alleges:

20 PARTIES

- 21 1. Virginia Herold (Complainant) brings this action solely in her official capacity as the
22 Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
23 2. On or about December 4, 2006, the Board issued Pharmacy Technician License
24 Number TCH 72559 to Enrique Rodriguez (Respondent). The Pharmacy Technician license
25 expired on June 30, 2016, and has not been renewed.

26 PRIOR DISCIPLINARY MATTER

- 27 3. In a disciplinary action entitled "*In the Matter of the Accusation Against Enrique*
28 *Rodriguez*," Case No. 5297, the Board issued a Decision, effective April 8, 2016, in which

1 Respondent's Pharmacy Technician license was revoked. However, the revocation was stayed
2 and Respondent's Pharmacy Technician license was placed on probation for a period of four (4)
3 years with certain terms and conditions. A copy of that Decision is attached as Exhibit A and is
4 incorporated by reference.

5 JURISDICTION

6 4. This Petition to Revoke Probation is brought before the Board under the authority of
7 the following terms and conditions of probation.

8 5. At all times after the effective date of Respondent's probation, Condition 13 stated, in
9 pertinent part:

10 If respondent violates probation in any respect, the Board, after giving respondent notice
11 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
12 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
13 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
14 a petition to revoke probation or an accusation is filed against respondent during probation, the
15 Board shall have continuing jurisdiction and the period of probation shall be automatically
16 extended until the petition to revoke probation or accusation is heard and decided.

17 FIRST CAUSE TO REVOKE PROBATION

18 (Failure to Obey All Laws)

19 6. At all times after the effective date of Respondent's probation, Condition 2 stated, in
20 pertinent part:

21 **Obey All Laws.** Respondent shall obey all state and federal laws and regulations.
22 Respondent shall report any of the following occurrences to the Board, in writing, within seventy-
23 two (72) hours of such occurrence:

- 24 a) an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws;
- 27 b) a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
28 criminal complaint, information or indictment;

1 7. Respondent's probation is subject to revocation because he failed to comply with
2 Condition 2, referenced above, in that Respondent failed to report to the Board an arrest and a
3 guilty plea. The facts and circumstances regarding this violation are as follows:

4 a. On or about September 22, 2016, Respondent was arrested in Oakland for violating
5 Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance).
6 Respondent did not report this arrest to the Board.

7 b. On or about October 24, 2016, in Riverside County Superior Court, Case No.
8 INF1401963, Respondent pleaded guilty to violating Health and Safety Code section 11377,
9 subdivision (a) (possession of a controlled substance), a misdemeanor. Respondent did not report
10 that guilty plea to the Board.

11 SECOND CAUSE TO REVOKE PROBATION

12 (Failure to Appear for Interviews with the Board)

13 8. At all times after the effective date of Respondent's probation, Condition 4 stated:

14 **Interview with the Board.** Upon receipt of reasonable prior notice, respondent shall
15 appear in person for interviews with the Board or its designee, at such intervals and locations as
16 are determined by the Board or its designee. Failure to appear for any scheduled interview
17 without prior notification to Board staff, or failure to appear at two (2) or more scheduled
18 interviews with the Board or its designee during the period of probation, shall be considered a
19 violation of probation.

20 9. Respondent's probation is subject to revocation because he failed to comply with
21 Condition 4, referenced above, in that Respondent failed to appear for interviews with the Board.
22 The facts and circumstances regarding this violation are as follows:

23 a. On or about April 12, 2016, the Board sent a letter to Respondent directing him to
24 report in person for an office conference on April 26, 2016. Respondent failed to appear at the
25 office conference and did not provide prior notification to Board staff.

26 b. On or about May 12, 2016, the Board sent a letter to Respondent directing him to
27 report in person for an office conference on May 24, 2016. Respondent failed to appear at the
28 office conference and did not provide prior notification to Board staff.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Pay Costs)

10. At all times after the effective date of Respondent's probation, Condition 7 stated, in pertinent part:

Reimbursement of Board Costs. As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,442. Respondent shall make said payments in 36 equal monthly installments of \$40.05. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

11. Respondent's probation is subject to revocation because he failed to comply with Condition 7, referenced above, in that Respondent failed to pay the Board any of its costs of investigation and prosecution.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Participate in Random Drug Screening)

12. At all times after the effective date of Respondent's probation, Condition 15 stated, in pertinent part:

Random Drug Screening. Respondent, at his own expense, shall participate in random screening, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

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1 13. Respondent's probation is subject to revocation because he failed to comply with
2 Condition 15, referenced above, in that Respondent failed to participate in random drug
3 screening.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
6 Petition to Revoke Probation, and that following the hearing, the Board of Pharmacy issue a
7 decision:

8 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 5297
9 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician
10 License No. TCH 72559 issued to Enrique Rodriguez;

11 2. Revoking or suspending Pharmacy Technician License No. TCH 72559 issued to
12 Enrique Rodriguez;

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

14
15 DATED: 8/7/17

Virginia K. Herold

16 VIRGINIA K. HEROLD
17 Executive Officer
18 Board of Pharmacy
19 Department of Consumer Affairs
20 State of California
21 Complainant

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Exhibit A

Decision and Order

Case No. 5297

1 KAMALA D. HARRIS
Attorney General of California
2 JOSHUA A. ROOM
Supervising Deputy Attorney General
3 NICHOLAS TSUKAMAKI
Deputy Attorney General
4 State Bar No. 253959
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1188
6 Facsimile: (415) 703-5480
E-mail: Nicholas.Tsukamaki@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. 5297

12 **ENRIQUE RODRIGUEZ**
1737 Via Lacqua
13 San Lorenzo, CA 94580

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
172559

15 Respondent.
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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 4, 2006, the Board issued Pharmacy Technician Registration
23 Number TCH 72559 to Enrique Rodriguez (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

8 5. 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 **STATUTORY PROVISIONS**

15 6. Section 4060 of the Code provides, in relevant part:

16 "No person shall possess any controlled substance, except that furnished to a person upon
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
23 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer.

27 ..."

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FACTUAL BACKGROUND**

6 13. On or about April 10, 2014, the vehicle in which Respondent was traveling was
7 stopped and searched at a music festival in Indio, California. Security guards working for the
8 music festival discovered various drugs in the vehicle, including marijuana, approximately four
9 (4) psilocybin mushrooms, and approximately twenty-eight (28)
10 methylenedioxymethamphetamine (MDMA) pills, also known as ecstasy. While at the scene,
11 Respondent told an officer with the Riverside County Sheriff's Office that the marijuana,
12 psilocybin mushrooms, and MDMA pills belonged to Respondent.

13 **CAUSE FOR DISCIPLINE**

14 **(Illegal Possession of Controlled Substances)**

15 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
16 and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that
17 Respondent possessed controlled substances without a prescription. The circumstances of
18 Respondent's conduct are set forth above in paragraph 13.

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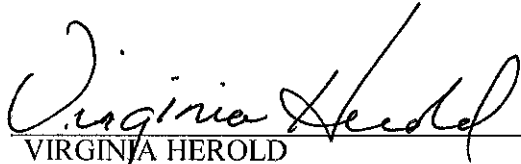
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PRAYER

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 72559 issued to Enrique Rodriguez;
2. Ordering Enrique Rodriguez 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: 2/23/15 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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