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

In the Matter of the Accusation Against: OMAR ALONZO GUZMAN Pharmacy Technician Registration No. TCH 40987 Respondent.	Case No.: 2922 OAH No.: L2006070307

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on March 9, 2007.

IT IS SO ORDERED February 7, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against: OMAR ALONZO GUZMAN Pharmacy Technician Registration No. TCH 40987 Respondent.	Case No. 2922 OAH No. L2006070307

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on December 11, 2006, in Los Angeles, California.

Deputy Attorney General Linda L. Sun represented complainant.

Omar Alonso Guzman (respondent) appeared and represented himself.

Evidence was received and the record was left open to allow complainant to file an Amended Accusation. Complainant submitted the Amended Accusation on December 15, 2006, which was admitted, and made part of exhibit 1. Respondent did not submit a reply. The record was closed on December 26, 2006. The Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. Patricia F. Harris made and filed the Accusation and the First Amended Accusation in her official capacity as Executive Director of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On March 8, 2002, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 40987 to respondent. Respondent's registration is in full force and effect and has an expiration date of March 31, 2007.

3. On July 1, 2004, in the Superior Court of California, County of Los Angeles, (Case No. MA028858), respondent was convicted on his plea of nolo contendere to one count charging a violation of Penal Code section 288, subdivision (c)(1), lewd act against a child, a felony involving moral turpitude. It is substantially related to the duties, functions and qualifications of a pharmacy technician based on the underlying circumstances of the conviction.

4. Imposition of sentence was suspended and respondent was placed on formal probation for a period of five years on certain terms and conditions including conditions ordering respondent to, inter alia, spend 90 days in the Los Angeles County Jail; complete a sexual offender psychological counseling program; and to register as a sex offender.

5. The facts and circumstances of the offense were that respondent went into her step-daughter's room while she was asleep undressed her, touched her in an inappropriate sexual manner, and took photographs while he touched her. Thereafter, respondent downloaded and saved the photographs onto the family computer. Respondent asserted that he was addicted to pornography, and was constantly viewing pornographic web-sites during the time that the incident took place.

6. On or about July 1, 2005, respondent violated his probation by failing to register pursuant to his probation terms. On March 20, 2006, respondent entered a plea of nolo contendere and was convicted of violating Penal Code section 290, subdivision (a)(1)(A), failure to register as a sex offender. Respondent was sentenced to serve 16 months in state prison and was paroled into the community after serving eight months of his sentence.

7. Respondent presented some evidence of rehabilitation. He has completed the court ordered sex offender counseling program. Respondent also presented letters of reference from employers attesting to his competence as a pharmacy technician.

8. Complainant submitted certification of costs of investigation and enforcement of this matter totaling $6,236.75. This amount is deemed reasonable under Business and Professions Code section 125.3.

DISCUSSION

10. Respondent testified that he did not touch the victim in a sexual manner. Respondent's assertion is not persuasive. By entering a plea of guilty, respondent admitted the elements of the alleged crimes and the underlying allegations of the criminal complaint (*Arenstein v. California State Board of Pharmacy* (1968) 265 Cal.App.2d 179, 190.) Further, respondent admitted to police officers all of the facts set forth in Factual Finding 5.

11. The crime is substantially related to the duties, functions, and qualifications of a pharmacy technician because respondent, in committing this crime, not only violated the trust of a child, he used his knowledge of computers to download pictures of his crime to his personal computer. The nexus is established because a pharmacy technician has computer access to private patient information such as age, gender, address, telephone numbers and email addresses.

12. The Board has the responsibility to protect the public. In discharging this responsibility, consideration is also given to the recent date of respondent's conviction, the seriousness of the offense, the fact that respondent violated the terms of his probation, and the fact that he remains on parole. In this case, revocation is the appropriate discipline.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's pharmacist's license under Business and Professions Code sections 490, 4300 and 4301, subdivisions (f) and (l), based on the convictions set forth in Factual Findings 3 and 6.

2. Grounds exist to suspend or revoke respondent's pharmacist's license for unprofessional conduct under Business and Professions Code sections 4300, and 4301, subdivision (f), for committing an act of gross immorality as set forth in Factual Finding 5.

3. Grounds exist to order respondent to pay the Board $6,236.75, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 7.

ORDER

1. Pharmacist Technician Registration No. TCH 40987, issued to respondent Omar Alonso Guzman, is revoked.

2. Respondent Omar Alonzo Guzman is hereby ordered to pay $6,236.75 to the Board of Pharmacy for costs of enforcement and prosecution of this matter under Business and Professions Code section 125.3.

DATED: December 28, 2006

HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

2006070307

BILL LOCKYER, Attorney General
of the State of California
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Attorneys for Complainant

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DEC 15 2006
Office of Administrative Hearings
LOS ANGELES

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

In the Matter of the Accusation Against: **OMAR ALONSO GUZMAN** 44849 Fenhold Street Lancaster, CA 93535 Pharmacy Technician Registration No. TCH 40987 Respondent.	Case No. 2922 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 8, 2002, the Board issued Pharmacy Technician Registration No. TCH 40987 to Omar Alonso Guzman (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

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JURISDICTION

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

4. Section 118, subdivision (b) of the Code provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

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

6. 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:

. . . .

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

. . . .

"(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."

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of that license.

8. 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."

9. Section 125.3 of the Code states, 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.

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FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crimes)

10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

A. On or about May 18, 2004, Respondent was convicted by the court on his plea of nolo contendere for violating Penal Code section 288, subdivision (c)(1), a felony (lewd act against child), in the Superior Court of California, County of Los Angeles, Lancaster Judicial District, Case No. MA028858, entitled *People v. Omar Alonso Guzman*. Respondent was placed on a 60-month formal probation, served 90 days in jail and was registered as a sex offender.

B. The circumstances underlying the conviction are that from on and between August 1, 2003 and March 31, 2004, Respondent committed lewd acts against a minor, by touching her buttocks and genitals and taking nude pictures of her, while she was asleep.

C. On or about March 20, 2006, Respondent was convicted by the court on his plea of nolo contendere for violating Penal Code section 290, subdivision(a)(1)(a), a felony (failure to register as a sex offender), in the Superior Court of California, County of Los Angeles, Lancaster Judicial District, Case No. MA034526, entitled *People v. Omar Alonso Guzman*. Respondent was ordered to serve 16 months in jail.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude)

11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f) of the Code, on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, as more fully set forth above in paragraph 10.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 40987, issued to Omar Alonso Guzman;

2. Ordering Omar Alonso Guzman to pay the Board 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: 12/14/06

for

VIRGINIA HEROLD
Interim Executive Officer
Board of Pharmacy
State of California
Complainant

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DECLARATION OF SERVICE

(Certified & First Class Mail (separate mailing))

In the Matter of the Accusation Against:
Omar Alonso Guzman

OAH No. L2006070307

Board of Pharmacy Case No. 2922

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 So. Spring St., Los Angeles, CA 90013

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On December 14, 2006, I served the attached **FIRST AMENDED ACCUSATION** by placing a true copy thereof enclosed in a sealed envelope as certified mail with postage thereon fully prepaid and return receipt requested, and another true copy of the **FIRST AMENDED ACCUSATION** was enclosed in a second sealed envelope as first class mail with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General, addressed as follows:

Omar Alonso Guzman
945 East Avenue Q-4 #107
Palmdale, CA 93550

Certified Mail# 70010360000327081680

Omar Alonso Guzman
44849 Fenhold Street
Lancaster, CA 93535

Certified Mail# 70010360000327081697

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on December 14, 2006, at Los Angeles, California.

Pamela Van Kesteren
Typed Name

Signature

60183707.wpd

BILL LOCKYER, Attorney General
of the State of California
LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6375
Facsimile: (213) 897-2804

Attorneys for Complainant

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

In the Matter of the Accusation Against: OMAR ALONSO GUZMAN 945 E. Avenue Q-4 #107 Palmdale, CA 93550 Pharmacy Technician Registration No. TCH 40987 Respondent.	Case No. 2922 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 8, 2002, the Board issued Pharmacy Technician Registration No. TCH 40987 to Omar Alonso Guzman (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2007, unless renewed.

JURISDICTION

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

4. Section 118, subdivision (b) of the Code provides that the suspension, expiration, or forfeiture by operation of law of a license does not deprive the Board of authority or jurisdiction to institute or continue with disciplinary action against the license or to order suspension or revocation of the license, during the period within which the license may be renewed, restored, reissued or reinstated.

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

6. 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:

. . . .

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

. . . .

"(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."

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of that license.

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9. Section 125.3 of the Code states, 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime)

10. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:

A. On or about July 1, 2004, Respondent was convicted by the court on his plea of nolo contendere for violating Penal Code section 288, subdivision (c)(1), a felony (lewd

act against child), in the Superior Court of California, County of Los Angeles, Lancaster Judicial District, Case No. MA028858, entitled *People v. Omar Alonso Guzman*. Respondent was placed on a 60-month formal probation, served 90 days in jail and was registered as a sex offender.

B. The circumstances underlying the conviction are that from on and between August 1, 2003 and March 31, 2004, Respondent committed lewd acts against a minor, by touching her buttocks and genitals and taking nude pictures of her, while she was asleep.

SECOND CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude)

11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f) of the Code, on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, as more fully set forth above in paragraph 10.

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 40987, issued to Omar Alonso Guzman;

2. Ordering Omar Alonso Guzman to pay the Board 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: 6/2/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
State of California
Complainant

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