

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

In the Matter of the Accusation Against:

**JACQUELINE M. HALL**

Pharmacy Technician Registration  
No. TCH 63581

Respondent.

Case No. 3246

OAH No. 2011010279

**DECISION AFTER NONADOPTION**

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on June 30, 2011, in Bakersfield, California.

Deputy Attorney General Christina Thomas represented complainant. Respondent represented herself. Evidence was received and the matter was submitted.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy on July 26, 2011. After due consideration thereof, the Board of Pharmacy declined to adopt said proposed decision and thereafter on November 1, 2011 issued an Order of Non-adoption and subsequently on December 20, 2011 issued an Order Fixing Date for Submission of Argument. No written arguments having been received from either party and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision:

**FACTUAL FINDINGS**

1. Virginia Herold made and filed the Accusation and First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On June 25, 2005, the Board issued Pharmacy Technician Registration No. TCH 63581 to respondent. Said license is in full force and effect.

3. On November 5, 2010, in the Superior Court of California, County of Kern (Case No. BM778111A), respondent was convicted on her plea of nolo contendere to one count charging a violation of Vehicle Code section 23152, driving under the influence of alcohol (DUI).

4. Imposition of sentence was suspended and respondent was placed on summary probation for a period of three years on certain terms and conditions including a condition ordering respondent to complete DUI school.

5. The facts and circumstances of the offense were that respondent drove her vehicle after drinking alcoholic beverages at a bar. The arresting officer observed that respondent was driving erratically and continually crossing over the yellow line while driving 15 miles an hour over the posted speed limit. Respondent was unable to maintain her balance during the field sobriety test. Her blood alcohol concentration was .15 percent.

6. On June 8, 2008, respondent, who is employed as a pharmacy technician at Costco, requested to meet with her supervisors. During the meeting, respondent made a statement the content of which is the subject of disagreement. Her supervisor testified that respondent stated in the meeting that she was addicted to drugs, although she could not remember the exact words used by respondent. Respondent vehemently denied making that statement. Rather, respondent testified that she stated that she "had an alcohol problem." There were no corroborating witnesses or declarations submitted by either side concerning the statements made at that meeting. Even assuming that respondent's version is correct, she did not submit evidence of efforts to rehabilitate herself from her alcohol problem. In addition, respondent received her DUI conviction a little over two years after receiving counseling for her drinking problem. (CT 20:7-16; 29:5-6; 37:7-13; Exs.: 4, 5.) Although respondent testified that she does "not have an alcohol problem at this time," respondent admitted that she had "an alcohol thing" in 2008 and had a "lapse in judgment" in 2010. (CT 29:3-5; 31:11-13.)

7. During respondent's testimony, the Administrative Law Judge (ALJ) in this matter did not observe any outward signs that would indicate that respondent is addicted to drugs. According to the ALJ, she was alert, well kempt, and articulate and forceful in her testimony. Nor did the evidence indicate any "red flags" that are usually associated with a drug abuser or addict. For example, there was no evidence that respondent has been consistently tardy for work, or lethargic while at work; nor has she been accused of any wrongdoing while handling drugs or otherwise performing her duties as a pharmacy technician. In fact, respondent continues to work at Costco. Therefore, complainant did not establish by clear and convincing evidence that respondent used or possessed controlled substances.

8. Respondent has been a pharmacy technician for 6 years with no previous discipline.

9. Complainant submitted certification of costs of enforcement totaling \$9,657. In the First Amended Accusation there were three causes for discipline related to drug usage and possession, and one cause for discipline related to respondent's DUI conviction. Only the latter cause for discipline was proven. Therefore, pursuant to Business and Professions Code section 125.3, as recommended by the Administrative Law Judge in this matter, the reasonable costs of enforcement are \$2,500.

10. Pharmacy technicians hold positions of trust and are expected to practice unimpaired and with safety to the public. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public. However, Respondent's history of alcohol problems and her DUI conviction show a lack of good judgment and an inability to comply with rules. Her failure to provide evidence of rehabilitation from her "alcohol thing" in 2008 is also of concern to the Board (see Factual Finding 6). Under these circumstances, it would not be appropriate for respondent to continue to hold an unrestricted license in this case. It is concluded that Respondent's registration should be revoked, that the order of revocation should be stayed, and that Respondent's registration should be placed on three years' probation on terms and conditions that will assure the protection of the public.

#### LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Grounds exist to suspend or revoke respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300 and 4301, subdivisions (l), and California Code of Regulations, title 16, section 1770, based on respondent's conviction and the underlying circumstances set forth in Factual Findings 3, 4, 5, 6 and 10.

3. Grounds do not exist to suspend or revoke respondent's pharmacy technician's license for unprofessional conduct pursuant to Business and Professions Code sections 4060 and 4301, subdivisions (f), (h), and (p), because complainant did not prove by clear and convincing evidence that respondent used and/or possessed controlled substances or dangerous drugs, as set forth in Factual Findings 6 and 7.

4. The Board has the responsibility to protect the public. In discharging this

responsibility, the Board has promulgated disciplinary guidelines, incorporated by reference at Title 16, California Code of Regulations section 1760, which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case as follows:

- 1). Actual or potential harm to the public – Here, respondent's actions created potential harm to the public.
- 2). Actual or potential harm to any consumer – Respondent's conduct underlying her DUI conviction, drinking while driving, creates potential harm to the public. As explained in Factual Finding No. 10, Respondent's history of alcohol problems and her DUI conviction show a lack of good judgment and an inability to comply with rules.
- 3). Prior disciplinary record, including level of compliance with disciplinary order(s) – Respondent has no prior discipline.
- 4). Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s) – Respondent has not received any prior warnings, citations or fines from the Board.
- 5). Number and/or variety of current violations – Respondent has only one conviction.
- 6). Nature and severity of the act(s), offense(s) or crime(s) under consideration – Respondent's misconduct was serious with the potential for tragic consequences.
- 7). Aggravating evidence – Other than the areas of concern discussed in Factual Finding 10, there was no aggravating evidence in this case.
- 8). Mitigating evidence – Respondent has no prior history of discipline, which is a factor in mitigation.
- 9). Rehabilitation evidence – Respondent did not present evidence of rehabilitation concerning her "drinking problem."
- 10). Compliance with terms of any criminal sentence, parole, or probation – Respondent remains on probation for her DUI conviction.
- 11). Overall criminal record – The DUI conviction that is the subject of these proceedings represents the entirety of respondent's criminal record.

12). If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code – The DUI conviction has not been expunged.

13). Time passed since the act(s) or offense(s) – Respondent's conviction is only a little over one year old.

14). Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct – Respondent's conduct of driving after drinking alcoholic beverages is an intentional act.

15). Financial benefit to the respondent from the misconduct – Respondent received no financial benefit from her misconduct.

5. In its guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for DUI is considered a category III offense because it involved misuse of alcohol and presented a serious potential for harm. In consideration of all of the facts and circumstances of this case, the public would be adequately protected by placing respondent on probation with appropriate conditions including a condition ordering respondent to attend a program such as Alcoholics Anonymous to address her admitted abuse of alcohol.

6. Grounds exist to order respondent to pay the Board \$2,500, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 9.

### ORDER

Pharmacy Technician Registration No. 63581 issued to respondent Jacqueline M. Hall is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

#### **1. Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

## **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or,
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

## **3. Report to the Board**

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions

of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

#### **4. Interview with the Board**

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

#### **5. Cooperate with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

#### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3246 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3246 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the

pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board. Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

#### **7. 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 \$2,500. Respondent shall make said payments as directed on a schedule as directed by the Board or its designee. 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.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the Board its costs of investigation and prosecution.

#### **8. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

#### **9. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.



## **10. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

## **11. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

## **12. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

### **13. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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

### **14. Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

### **15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of

probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

#### **16. Random Drug Screening**

Respondent, at her own expense, shall participate in random testing, 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 alcohol, 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. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

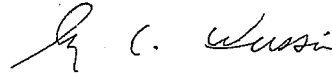
#### **17. Abstain from Drugs and Alcohol Use**

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except

when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

This Decision shall become effective on March 28, 2012.

IT IS SO ORDERED this 27<sup>th</sup> day of February, 2012.



By

---

STANLEY C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

JACQUELINE M. HALL  
443 Rian Noelle Court  
Bakersfield, CA 93308

Pharmacy Technician License No. TCH 63581

Respondent.

Case No. 3246

OAH No. 2011010279

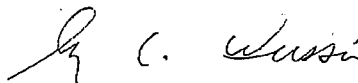
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

**ORDER OF NONADOPTION OF PROPOSED DECISION**

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the proposed decision in Administrative Case number 3246. A copy of the proposed decision is attached hereto.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered the transcript and will notify the parties when the transcript has been prepared and of the date for submission of written argument.

IT IS SO ORDERED THIS 1<sup>st</sup> day of November 2011.



---

STANLEY C. WEISSER  
President  
State Board of Pharmacy

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

In the Matter of the Accusation Against:

JACQUELINE M. HALL

Pharmacy Technician Registration No. TCH  
63581

Respondent.

Case No. 3246

OAH No. 2011010279

**PROPOSED DECISION**

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on June 30, 2011, in Bakersfield, California.

Deputy Attorney General Christina Thomas represented complainant. Respondent represented herself. Evidence was received and the matter was submitted.

**FACTUAL FINDINGS**

1. Virginia Herold made and filed the Accusation and First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

2. On June 25, 2005, the Board issued Pharmacy Technician Registration No. TCH 63581 to respondent. Said license is in full force and effect.

3. On November 5, 2010, in the Superior Court of California, County of Kern (Case No. BM778111A), respondent was convicted on her plea of nolo contendere to one count charging a violation of Vehicle Code section 23152, driving under the influence of alcohol (DUI).

4. Imposition of sentence was suspended and respondent was placed on summary probation for a period of three years on certain terms and conditions including a condition ordering respondent to complete DUI school.

5. The facts and circumstances of the offense were that respondent drove her vehicle after drinking alcoholic beverages at a bar. The arresting officer observed that respondent was driving erratically and continually crossing over the yellow line while driving 15 miles an hour over the posted speed limit. Respondent was unable to maintain her balance during the field sobriety test. Her blood alcohol concentration was .15 percent

6. On June 8, 2008, respondent, who is employed as a pharmacy technician at Costco, requested to meet with her supervisors. During the meeting, respondent made a statement the content of which is the subject of disagreement. Her supervisor testified that respondent stated in the meeting that she was addicted to drugs, although she could not remember the exact words used by respondent. Respondent vehemently denied making that statement. Rather, respondent testified that she stated that she "had an alcohol problem." There were no corroborating witnesses or declarations submitted by either side concerning the statements made at that meeting. Even assuming that respondent's version is correct, she did not submit evidence of efforts to rehabilitate herself from her alcohol problem.

7. During respondent's testimony, the undersigned did not observe any outward signs that would indicate that respondent is addicted to drugs. She was alert, well kempt, and articulate and forceful in her testimony. Nor did the evidence indicate any "red flags" that are usually associated with a drug abuser or addict. For example, there was no evidence that respondent has been consistently tardy for work, or lethargic while at work; nor has she been accused of any wrongdoing while handling drugs or otherwise performing her duties as a pharmacy technician. In fact, respondent continues to work at Costco and performs her duties competently. Therefore, complainant did not establish by clear and convincing evidence that respondent used or possessed controlled substances.

8. Respondent has been a pharmacy technician for 6 years with no previous discipline

9. Complainant submitted certification of costs of enforcement totaling \$9,657. In the First Amended Accusation there were three causes for discipline related to drug usage and possession, and one cause for discipline related to respondent's DUI conviction. Only the latter cause for discipline was proven. Therefore, pursuant to Business and Professions Code section 125.3, the reasonable costs of enforcement are \$2,500.

### LEGAL CONCLUSIONS

1. The standard of proof which must be met to establish the charging allegations herein is "clear and convincing" evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests with Complainant to offer proof that is clear, explicit and unequivocal--so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Grounds exist to suspend or revoke respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300 and 4301, subdivisions (l), and California Code of Regulations, title 16, section 1770, based on respondent's conviction and the underlying circumstances set forth in Factual Findings 3,4, and 5.

3. Grounds do not exist to suspend or revoke respondent's pharmacy technician's license for unprofessional conduct pursuant to Business and Professions Code sections 4060 and 4301, subdivisions (f), (h), and (p), because complainant did not prove by clear and convincing evidence that respondent used and/or possessed controlled substances or dangerous drugs, as set forth in Factual Findings 6 and 7.

4. The Board has the responsibility to protect the public. In discharging this responsibility, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case as follows:

1. *Actual or potential harm to the public* – Here, respondent's actions created potential harm to the public.
2. *Actual or potential harm to any consumer* – Respondent's conduct underlying her DUI conviction did not create potential harm to a consumer.
3. *Prior disciplinary record, including level of compliance with disciplinary order(s)* – Respondent has no prior discipline.
4. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)* – Respondent has not received any prior warnings, citations or fines from the Board
5. *Number and/or variety of current violations* – Respondent has only one conviction.
6. *Nature and severity of the act(s), offense(s) or crime(s) under consideration* – Respondent's misconduct was serious with the potential for tragic consequences.
7. *Aggravating evidence* – There was no aggravating evidence in this case.
8. *Mitigating evidence* – No mitigating evidence in this case.
9. *Rehabilitation evidence* – Respondent did not present evidence of rehabilitation concerning her "drinking problem."



10. *Compliance with terms of any criminal sentence, parole, or probation* – Respondent remains on probation for her DUI conviction.
11. *Overall criminal record* – The DUI conviction that is the subject of these proceedings represents the entirety of respondent's criminal record.
12. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code* – The DUI conviction has not been expunged.
13. *Time passed since the act(s) or offense(s)* – Respondent's conviction is only nine months old.
14. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct* – Respondent's conduct of driving after drinking alcoholic beverages is an intentional act.
15. *Financial benefit to the respondent from the misconduct* – Respondent received no financial benefit from her misconduct.

4. In its guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for DUI is considered a category III offense because it involved misuse of alcohol and presented a serious potential for harm. In consideration of all of the facts and circumstances of this case, the public would be adequately protected by placing respondent on probation with appropriate conditions including a condition ordering respondent to attend a program such as Alcoholics Anonymous to address her admitted abuse of alcohol.

5. Grounds exist to order respondent to pay the Board \$2,500, under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 9.

### ORDER

Pharmacy Technician Registration No. 63581 issued to respondent Jacqueline M. Hall is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

## **1. Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

## **2. Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician's license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

### **3. Report to the Board**

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

### **4. Interview with the Board**

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

### **5. Cooperate with Board Staff**

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

### **6. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3246 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3246 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

#### **7. 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 \$2,500. Respondent shall make said payments as directed by the Board. 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.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the Board its costs of investigation and prosecution.

#### **8. Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

**9. Status of License**

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

**10. License Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

**11. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

## **12. Tolling of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

## **13. Violation of Probation**

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating

that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.


**14. Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

**15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups  
(Appropriate for those cases with chemical dependency (alcohol, drugs))**

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

DATED: July 25, 2011

  
HUMBERTO FLORES  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 MARC D. GREENBAUM  
Supervising Deputy Attorney General  
3 STEPHEN A. MILLS  
Deputy Attorney General  
4 State Bar No. 54145  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2539  
6 Facsimile: (213) 897-2804

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:  
12 **JACQUELINE M. HALL**  
13 **443 Rian Noelle Court**  
**Bakersfield, CA 93308**  
14  
15 **Pharmacy Technician Registration No. TCH**  
**63581**  
16  
17 Respondent.

Case No. 3246

**ACCUSATION**

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, Department of Consumer Affairs.  
22 2. On or about June 29, 2005, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 63581 to Jacqueline M. Hall (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on September 30, 2010, unless renewed.

26 **JURISDICTION**

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



STATUTORY PROVISIONS

1  
2       4.    Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license  
3 shall not deprive the Board 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 4060 states:

6            "No person shall possess any controlled substance, except that furnished to a person  
7 upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic  
8 doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
9 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
10 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
11 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
12 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
13 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
14 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
15 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
16 labeled with the name and address of the supplier or producer.

17            "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
18 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs  
19 and devices."

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

22       7.    Section 4301 states:

23            "The board shall take action against any holder of a license who is guilty of  
24 unprofessional conduct or whose license has been procured by fraud or misrepresentation or  
25 issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the  
26 following:

27            .....

28            ///



1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare.”

3 **COST RECOVERY**

4 10. Section 125.3 states, in pertinent part, that the Board may request the administrative  
5 law judge to direct a licentiate found to have committed a violation or violations of the licensing  
6 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the  
7 case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(The Use of a Controlled Substance)**

10 11. Respondent is subject to disciplinary action under section 4301, subdivision (h) and  
11 (j) for violating Health and Safety Code section 11550, subdivision (a), in that Respondent  
12 admitted to using a controlled substance to an extent or in a manner dangerous or injurious to  
13 herself and the public. On July 25, 2008, the Board received a letter dated July 2, 2008, from  
14 Respondent’s employer, Costco Wholesale in the city of Bakersfield, informing the Board that  
15 Respondent had admitted to having a drug addiction on April 2, 2008. The letter further stated  
16 that Respondent had submitted to a drug rehabilitation program and was released on June 2, 2008.  
17 Respondent and Respondent’s employer failed to notify the Board within 30 days of the  
18 discovery of an impaired licensee as required by law.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Possession of Controlled Substances Without a Valid Prescription)**

21 12. Respondent is subject to disciplinary action under section 4301, subdivision (f) and  
22 4060, in that on or about April 2, 2008, Respondent admitted to having a drug addiction while  
23 being a licensed Pharmacy Technician. Complainant now refers to and incorporates all the  
24 allegations contained in paragraph 11, as though set forth fully.

25 **THIRD CAUSE FOR DISCIPLINE**

26 **(Conduct that Would have Warranted Denial of a License)**

27 13. Respondent is subject to disciplinary action under section 4301, subdivision (p), in  
28 that on or about April 2, 2008, Respondent admitted to having a drug addiction while being a

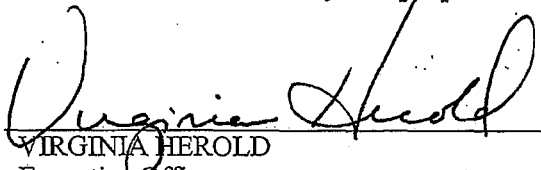
1 licensed Pharmacy Technician. Complainant now refers to and incorporates all the allegations  
2 contained in paragraph 11, as though set forth fully.

3 PRAYER

4 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
5 and that following the hearing, the Board issue a decision:

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 63581, issued  
7 to Respondent;
- 8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
9 enforcement of this case, pursuant to Business and Professions Code section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11  
12 DATED: 10/28/09



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

13  
14  
15  
16 LA2009602952  
17 60459660.doc  
18 9/22/09-IC

19  
20  
21  
22  
23  
24  
25  
26  
27  
28