

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

In the Matter of the Accusation Against:

Case No. 3265

MARGARIE SAUCEDO

7712 Craig Ave
Buena Park, CA 90621

Pharmacy Technician License No. TCH 40762

Respondent.

DECISION AND ORDER

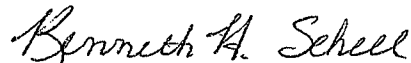
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 18, 2010.

It is so ORDERED on January 19, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

BEFORE THE
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In the Matter of the Accusation Against:

MARGARIE R. SAUCEDO
7712 Craig Ave
Buena Park, CA 90621

Pharmacy Technician
Registration No. TCH 40762

Respondent.

Case No. 3265

OAH No. 2009061025

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on August 25, 2009.

Marichelle S. Tahimic, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

Respondent was present and represented herself.

The matter was submitted on September 29, 2009.¹

¹ At the conclusion of the hearing, the record remained open until September 21, 2009 for Respondent to file an additional exhibit regarding the status of her criminal case. On September 21, 2009, the record was closed, and the matter was submitted without receipt of the document.

On September 29, 2009, the record was re-opened, and Respondent filed the court documents (Exhibit E). On the same date, Complainant filed her Response to Additional Documents Submitted by Respondent (Exhibit 10). Exhibit E is admitted.

On September 29, 2009, the record was closed, and the matter was submitted.

FACTUAL FINDINGS

1. Virginia Herold (Complainant) filed Accusation and First Amended Accusation, Case Number 3265, dated April 10, 2009, and August 12, 2009, respectively against Margarie R. Saucedo (Respondent) in her official capacity as the Executive Officer, State of California, Department of Consumer Affairs, Board of Pharmacy (Board), Department of Consumer Affairs.

2. On December 12, 2001, the Board issued Pharmacy Technician Registration Number TCH 40762 to Respondent. At all times relevant herein, said Registration was in full force and effect and will expire on December 31, 2009, unless renewed.

3. On October 15, 2006, San Bernardino County Sheriff's Department Deputy M. Mason (Deputy Mason) observed Respondent operate a motor vehicle across a double-yellow line in Rancho Cucamonga, California. When Deputy Mason made a traffic stop, he smelled the odor of alcohol on Respondent's breath. He noted Respondent's speech was slurred, and her eyes were red, watery and bloodshot. Respondent admitted to Deputy Mason that she had consumed two beers about an hour before. Respondent consented to a field sobriety test from which Deputy Mason determined Respondent was under the influence of alcohol.

4. In the process of arresting Respondent, Deputy Mason asked Respondent to empty her pockets. Respondent placed her hand into her left pocket and turned it inside out. As she emptied her left pocket, Deputy Mason saw a small amount of a crystalline substance blow into the wind. As she removed her hand from her pocket, Respondent pulled out a knotted up clear bag, which the Sheriff's deputy recognized to be commonly used to hold methamphetamine. When asked about the bag, Respondent hid it behind her back and explained that it was "lint." Deputy Mason obtained a small sample of the residue left in Respondent's left pocket and tested it. The sample tested positive for methamphetamine. Following her arrest, Respondent submitted to a blood test which showed her blood alcohol content was 0.16 percent.

5. Respondent was arrested and charged with violating:

- Health and Safety Code section 11350, subdivision (a) (possession of a controlled substance, to wit: cocaine), a felony, [Count 1];
- Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol or drugs, or a combination of both), a misdemeanor, [Count 2]; and
- Vehicle Code section 23152, subdivision (b) (driving a vehicle with a 0.08 percent or higher blood alcohol content), a misdemeanor, [Count 3].

6. On March 26, 2007, in the Superior Court of California, County of San Bernardino, in the case entitled *The People of the State of California v. Margarie Saucedo*,

Case Number FWV 039874. Respondent entered a plea of guilty and was convicted of Counts 1 and 2. Pursuant to a plea agreement, Count 3 was dismissed.

As a consequence of the conviction for possession of a controlled substance [Count 1], Court sentencing was deferred for 24 months on terms and conditions that included that she:

- Pay a Diversion Administrative Fee of \$500.00 pursuant to Penal Code section 1001.15 to Central Collections within 90 days,
- pay Diversion Restitution Fee of \$150.00 pursuant to Penal Code section 1001.90 plus 10 percent collection fee to Central Collections within 180 days,
- attend and complete Drug Diversion Program,
- submit to urine test at the direction of the Program Director, and
- attend Narcotics Anonymous (NA) meetings twice a week for a total of eight.

As a consequence of the DUI conviction [Count 2], the Court placed Respondent on summary probation for three years on terms and conditions that she, among other things:

- Pay a fine and fee of \$1,665.00,
- attend and complete a Court approved first offender alcohol program for three months,
- not drive a motor vehicle unless properly licensed and insured,
- not drive a motor vehicle with a measureable blood alcohol level, and
- if arrested for DUI, submit to a test of blood, breath or urine if requested by the arresting officer.

7. Respondent explained the facts and circumstances underlying her conviction. On the day of the incident that resulted in her conviction, Respondent had been drinking beer and watching football with friends. She did not understand the reason the law enforcement officer reported that the substance found in her pocket was methamphetamine; she testified that "she can't say that she has done methamphetamine but she has done cocaine; and the last time that she used cocaine was the night of the arrest."

8. On October 15, 2006, Respondent was in possession of a controlled substance (methamphetamine), a felony, by reason of Findings 3, 4, 5 and 7.

9. On October 15, 2006, Respondent operated a motor vehicle while under the influence of alcohol or drugs or both, in a manner that was potentially injurious to herself and/or the public, by reason of Findings 3, 4, 5 and 7.

10. The facts set forth in Findings 3, 4, 5 and 7 establish that Respondent abused alcohol and was in possession of a controlled substance without a prescription from a medical practitioner. Respondent's criminal acts evidence present or potential unfitness to perform the functions or duties of a pharmacist technician. Considering the foregoing, pursuant to Title 16, California Code of Regulations, section 1770, the crime of which

Respondent was convicted is substantially related to the qualifications, functions or duties of a pharmacist technician.

11. Respondent provided evidence to establish that since she engaged in the misconduct that resulted in her conviction (on October 15, 2006), she made a conscious decision to change. She recognizes that driving under the influence and possessing a controlled substance involved a mistake in judgment. Though she values her friends and family, she understands her obligation not to "submit to peer-pressure." Respondent testified that she refrains from alcohol consumption and "does not attend functions that could affect my sobriety." She testified that she does not drink and drive or use illegal drugs.

Respondent testified that 2006 was an unusually stressful year for her. Her mother was diagnosed with cancer, and Respondent was in the midst of a custody battle. Now, she "looks at life in a different way." Since her arrest, she has concentrated her effort on becoming a better person and mother and her "commitment to work has also heightened." Her mother's health has improved. Respondent has purchased a new vehicle and her first home.

12. Respondent has complied with the terms and conditions of criminal probation.

Respondent completed the Court ordered alcohol and drug related programs, with the possible exception of paying all fines in full. Over a six-month period of time, she was randomly tested by the Diversion Program on seven or eight occasions. At no time has she tested positive for a controlled substance. In addition to attending the Court ordered AA meetings, she has voluntarily attended AA meetings sporadically. She is subjected to random drug tests by her employer. On September 29, 2009, the Court granted Respondent's petition to dismiss the diverted charge [Count 1]. She remains on criminal probation until March 25, 2010 for Count 2.

13. Respondent has been licensed by the Board for eight years, and it has been three years since she engaged in the criminal acts that resulted in her conviction. There is no evidence that Respondent has sustained any other conviction or prior discipline of her license. No patient or member of the public suffered actual harm as a result of Respondent's misconduct.

14. Respondent testified regarding her background. She graduated from Buena Vista High School and has worked at Rite-Aid Pharmacy for 16 years. Through her employer, she completed a six-month training course to become a pharmacy technician, and has been registered in the State of California as a pharmacy technician since 2001. Four months ago, she was promoted by her employer; her new duties require that she help each pharmacy prepare its inventory; among other things, she checks the shelves for outdated medications. She is supervised by the district manager and the pharmacy-in-charge at the store.

15. Respondent provided a letter of support from Thuy Nguyen (Nguyen), a pharmacist with whom she has worked for the last seven years. Nguyen is aware of

Respondent's misconduct. Nguyen's letter supports the evidence that Respondent is hardworking, dependable, reliable and an integral part of her employer's pharmacy team.

16. Complainant seeks recovery of the costs of investigation (\$1,698.50) and prosecution (\$5,086.50) in the amount of \$6,030.00. In support of the foregoing, Complainant submitted a certified copy of the actual costs of investigation and prosecution in the amount of \$6,030.00. Respondent made no objection to the foregoing.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent for unprofessional conduct under Business and Professions Code section 4301, subdivision (j) in that Respondent violated the laws of the State of California; on October 15, 2006, Respondent was in possession of a controlled substance, to wit: methamphetamine in violation of Health and Safety Code section 11350, subdivision (a) and Business and Professions Code section 4060, by reason of Findings 3, 4, 5, 7 and 8.

2. Cause exists to discipline Respondent for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h) in that Respondent operated a motor vehicle while under the influence of alcohol or drugs, or both, in a manner that was potentially injurious to herself and/or the public, by reason of Finding 3, 4, 5, 7 and 9.

3. Cause exists to discipline Respondent for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (l) in that Respondent has been convicted of a crime that is substantially related to the qualifications, functions and duties of a pharmacy technician in that on March 26, 2007, Respondent was convicted of DUI, by reason of Finding 3, 4, 5, 7 and 10.

4. Complainant established that disciplinary action is appropriate in this case. The facts, violations, Board's criteria for rehabilitation,² Board's disciplinary guidelines and evidence of rehabilitation have been considered. Considering the foregoing, Respondent provided sufficient evidence of rehabilitation to establish that it would not be contrary to the public interest to allow her to maintain her license as a pharmacist technician, subject to terms and conditions set forth below.

5. Pursuant to Business and Professions Code section 125.3, subdivision (a), Complainant seeks to recover the reasonable costs of investigation and enforcement of this case. Respondent committed the violations alleged in the First Amended Accusation (Findings 3, 4, 5, 6, 7 and 8, and Legal Conclusions 1 through 4). Pursuant to Business and Professions Code section 125.3, subdivision (c), Complainant's certified copy of costs is prima facie evidence of the reasonable costs of investigation and prosecution of the case. Respondent made no objection to the foregoing.

² Title 16, California Code of Regulations, section 1769.

Complainant is entitled to recover the reasonable costs of investigation and enforcement in the amount of \$6,030.00.

ORDER

Pharmacy Technician Registration Number TCH 40762 issued to Respondent Margarie Rosita Saucedo is revoked. The revocation is stayed. Respondent Margarie Rosita Saucedo is placed on probation for three (3) years on the terms and conditions set forth below.

1. **Obey All Laws.**

Respondent shall obey all State and Federal laws and regulations.

Respondent shall report any of the following events to the Board, in writing, within 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 to any criminal complaint, information or indictment in any State or Federal criminal proceeding,
- a conviction of any crime, and
- discipline, citation or other administrative action filed by any State or Federal Agency which involves Respondent's Pharmacy Technician 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.

2. **Report to the Board.**

Respondent shall report to the Board, on a quarterly basis, on the schedule directed by the Board or its designee. The report shall be in person or in writing as the Board or its designee directs. 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 the form directed by the Board or its designee shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed by the Board or its designee may be added to the period of probation. 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.

3. 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 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.

4. Cooperate with Board Staff.

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

5. Notice to Employers.

During the period of probation, Respondent shall notify all present and prospective employers of the Decision in case number 3265 and the terms and conditions imposed on her by the Decision, as follows:

- Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment, she 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 individual(s) has/have read the Decision in case number 3265 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 3265 in advance of Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.
- Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking 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 she has read the Decision in case number 3265 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.

Within the meaning of this provision, "Employment" shall include 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 registration is a requirement or criterion for employment, whether Respondent is considered an employee, independent contractor or volunteer.

6. Attend Substance Abuse and Relapse Prevention and Support Groups.

Within 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.

7. Random Drug Screening.

At her expense, Respondent 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 probationary period and the frequency of testing will be determined by the Board or its designee. Respondent shall fully cooperate with the Board or its designee. When directed by the Board or its designee, Respondent shall 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 Respondent's treatment. 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 as a pharmacy technician. Respondent shall not resume work as a pharmacy technician until notified by the Board in writing.

During the automatic suspension described in the foregoing paragraph, 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 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.

8. Work Site Monitor.

Within 10 days of the effective date of this Decision, Respondent shall identify a work site monitor, who must be approved by the Board. The work site monitor shall be responsible for supervising Respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports, in writing, to the Board on a quarterly basis. Should the designated work site monitor determine, at any time during the probationary period, that Respondent has not maintained sobriety, he/she shall notify the Board immediately, either orally or in writing, as the Board or its designee directed. Should Respondent change employment, a new work site monitor must be designated and approved by the Board within 10 days of Respondent commencing new employment. Failure to identify an acceptable initial or replacement work site monitor or to ensure quarterly reports are submitted by the work site monitor to the Board in a timely manner shall be constitute a violation of probation.

9. Notification of Departure.

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than five days, Respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

10. Abstain from Drugs and Alcohol.

Respondent shall abstain from the possession or use of alcohol, controlled substances, dangerous drugs and associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of documented medical treatment of Respondent. 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 Respondent's treatment. Failure to provide such documentation in a timely manner shall be considered a violation of probation. Any possession or use of alcohol, controlled substances or associated paraphernalia not supported by the documentation provided in a timely manner shall be considered a violation of probation.

11. Evidence of Completion of Criminal Probation

Prior to termination of probation, Respondent shall provide written evidence to the Board that she has successfully completed probation in her criminal case, Case Number FWV 039874.

12. Reimbursement of Board Costs.

As a condition precedent to successful completion of probation, Respondent shall pay the Board's costs of investigation and prosecution in the amount of \$6,030.00. No later than thirty (30) days of the effective date of this Decision, Respondent shall commence making equal monthly payments of the foregoing. There shall be no deviation from this schedule without 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 her obligation to reimburse the Board's costs of investigation and prosecution.

13. Probation Monitoring Costs.

Respondent shall pay any costs associated with probation monitoring as determined by the Board for each year of probation. Such costs shall be payable to the Board on a schedule directed by the Board or its designee. Failure to pay such costs in a timely manner shall be considered a violation of probation.

14. Status of License.

While on probation, Respondent shall maintain an active, current pharmacy technician license with the Board. Failure to do so shall be considered a violation of probation.

During the period of probation, if Respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise, upon renewal or reapplication Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

15. License Surrender While Registration is on Probation/Suspension.

Following the effective date of this Decision, should Respondent cease work due to retirement or health or otherwise be unable to satisfy the terms and conditions of probation, Respondent may tender her pharmacy technician registration to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or to take other appropriate and reasonable action. Upon acceptance of the surrender of her license, Respondent will no longer be subject to the terms and conditions of probation. The

surrender of her license will constitute a record of discipline and shall become a part of the Respondent's license history with the Board.

Within 10 days of notification by the Board of its acceptance of Respondent's surrender of her license, Respondent shall relinquish her pharmacy technician license to the Board. Respondent may not re-apply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall satisfy the requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

16. Notification of Change in Name, Residence Address, Mailing Address or Employment.

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

Failure to timely notify the Board of any change in employer, name, address, or telephone number shall be considered a violation of probation.

17. Tolling of Probation.

Except during any period of suspension, at all times while on probation, Respondent shall maintain employment as a pharmacy technician in the State of California for a minimum of eighty (80) hours per calendar month. Any month during which this minimum is not met shall toll the probationary period, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any period of tolling probation, Respondent must comply with all terms and conditions of probation.

Should Respondent cease working as a pharmacy technician for a minimum of eighty (80) hours per calendar month in California, Respondent must notify the Board in writing within 10 days of cessation of work and must notify the Board in writing within 10 days of the resumption of employment. Any failure to provide such notification(s) shall be considered a violation of probation.

It shall be a violation of probation for Respondent's probationary period to remain tolled for more than 36 months.

"Cessation of work" means a calendar month during which Respondent does not work for a minimum of eighty (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 works as a pharmacy technician for a minimum of eighty (80) hours as a pharmacy technician (as defined by Business and Professions Code section 4115).

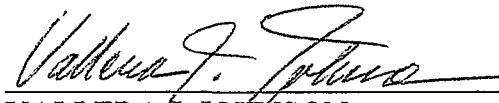
18. Violation of Probation.

If Respondent violates the conditions of her probation, after giving her notice and an opportunity to be heard, the Board may set aside the order and impose the stayed discipline of Respondent's license. During probation, if an Accusation or Petition to Revoke Probation is filed against Respondent's license or the Attorney General's Office has been requested to prepare an Accusation or Petition to Revoke Probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the Accusation or Petition to Revoke Probation has been resolved by a Board Decision.

19. Completion of Probation.

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

DATED: October 21, 2009



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 3265

13 MARGARIE R. SAUCEDO
7712 Craig Ave
14 Buena Park, CA 90621

**FIRST AMENDED
ACCUSATION**

15 Pharmacy Technician
16 Registration No. TCH 40762

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about December 12, 2001, the Board of Pharmacy issued Pharmacy
24 Technician Registration Number TCH 40762 to Margarie R. Saucedo (Respondent). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on December 31, 2009, unless renewed.

27 ///

28 ///

1 JURISDICTION

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

5 4. Section 4300 of the Code states:

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

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

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

14 (4) Revoking his or her license.

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

17

18 5. Section 118, subdivision (b), of the Code provides that the suspension,
19 expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to
20 proceed with a disciplinary action during the period within which the license may be renewed,
21 restored, reissued or reinstated.

22 STATUTORY AND REGULATORY PROVISIONS

23 6. Section 4301 of the Code defines unprofessional conduct to include any of
24 the following:

25 ...

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

...

(j) The violation of any of the statutes of this state, or any other state, or of the
United States regulating controlled substances and dangerous drugs.

...

///

1 (l) The conviction of a crime substantially related to the qualifications, functions,
2 and duties of a licensee under this chapter. The record of conviction of a
3 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
4 States Code regulating controlled substances or of a violation of the statutes of
5 this state regulating controlled substances or dangerous drugs shall be conclusive
6 evidence of unprofessional conduct. In all other cases, the record of conviction
7 shall be conclusive evidence only of the fact that the conviction occurred. The
8 board may inquire into the circumstances surrounding the commission of the
9 crime, in order to fix the degree of discipline, or in the case of a conviction not
10 involving controlled substances or dangerous drugs, to determine if the conviction
11 is of an offense substantially related to the qualifications, functions, and duties of
12 a licensee under this chapter. A plea or verdict of guilty or a conviction following
13 a plea of nolo contendere is deemed to be a conviction within the meaning of this
14 provision....

9 7. Section 4060 provides that "No person shall possess any controlled
10 substance, except that furnished to a person upon the prescription of a physician, dentist,
11 podiatrist, or veterinarian...."

12 8. Title 16, of the Code of Regulations, section 1770 defines a crime that is
13 substantially related to the qualifications, functions or duties of a licensee as follows:

14 For the purpose of denial, suspension, or revocation of a personal or facility
15 license pursuant to Division 1.5 (commencing with Section 475) of the Business
16 and Professions Code, a crime or act shall be considered substantially related to
17 the qualifications, functions or duties of a licensee or registrant if to a substantial
18 degree it evidences present or potential unfitness of a licensee or registrant to
19 perform the functions authorized by his license or registration in a manner
20 consistent with the public health, safety, or welfare.

18 9. Section 482 states:

19 Each board under the provisions of this code shall develop criteria to evaluate the
20 rehabilitation of a person when:

21 (a) Considering the denial of a license by the board under Section 480; or

22 (b) Considering suspension or revocation of a license under Section 490.
23 Each board shall take into account all competent evidence of rehabilitation
24 furnished by the applicant or licensee.

24 10. Title 16, of the Code of Regulations, section 1769 sets forth the following
25 factors to consider with regard to evidence of rehabilitation:

26 ...

27 (b) When considering the suspension or revocation of a facility or a personal
28 license on the ground that the licensee or the registrant has been convicted of a

1 crime, the board, in evaluating the rehabilitation of such person and his present
2 eligibility for a license will consider the following criteria:

- 3 (1) Nature and severity of the act(s) or offense(s).
- 4 (2) Total criminal record.
- 5 (3) The time that has elapsed since commission of the act(s) or
6 offense(s).
- 7 (4) Whether the licensee has complied with all terms of parole,
8 probation, restitution or any other sanctions lawfully imposed
9 against the licensee.
- 10 (5) Evidence, if any, of rehabilitation submitted by the licensee.

11 11. Section 492 also provides:

12 Notwithstanding any other provision of law, successful completion of any
13 diversion program under the Penal Code, or successful completion of an alcohol
14 and drug problem assessment program under Article 5 (commencing with Section
15 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
16 any agency established under Division 2 (commencing with Section 500) of this
17 code, or any initiative act referred to in that division, from taking disciplinary
18 action against a licensee or from denying a license for professional misconduct,
19 notwithstanding that evidence of that misconduct may be recorded in a record
20 pertaining to an arrest.

21 This section shall not be construed to apply to any drug diversion program
22 operated by any agency established under Division 2 (commencing with Section
23 500) of this code, or any initiative act referred to in that division.

24 COST RECOVERY

25 12. Section 125.3 of the Code states, in pertinent part, that the Board may
26 request the administrative law judge to direct a licentiate found to have committed a violation or
27 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
28 and enforcement of the case.

29 DRUGS

30 13. **Methamphetamine** is a Schedule II controlled substance as designated by
31 Health and Safety Code section 11055(d)(2), and is a dangerous drug pursuant to Business and
32 Professions Code section 4022.

33 14. **Cocaine** is a Schedule II controlled substance as designated by Health and
34 Safety Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions
35 Code section 4022.

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FACTS

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2 15. On or about October 15, 2006, Respondent was observed by an officer of
3 the San Bernardino County Sheriff's Department operating a motor vehicle across a double-
4 yellow line at about 8:41 p.m. in Rancho Cucamonga, California. The officer made a traffic stop
5 and smelled the odor of alcohol on Respondent's breath. He noted Respondent's speech was
6 slurred and her eyes were red, watery and bloodshot. Respondent admitted to consuming two
7 beers about an hour before. Respondent consented to a field sobriety test from which the officer
8 determined Respondent was under the influence of alcohol.

9 16. In the process of arresting Respondent, the officer asked Respondent to
10 empty her pockets. Respondent placed her hand into her left pocket and turned it inside out. As
11 Respondent emptied her left pocket, the officer saw a small amount of a crystalline substance
12 blow into the wind. As she removed her hand from her pocket, Respondent pulled out a knotted
13 up clear bag, which the officer recognized to be commonly used to hold methamphetamine.
14 When asked about the bag, Respondent hid it behind her back and explained that it was "lint."
15 The officer obtained a small sample of the residue left in Respondent's left pocket and tested it.
16 The sample tested positive for methamphetamine. Following her arrest, Respondent submitted
17 to a blood test which showed her blood alcohol content was 0.16%.

18 17. Respondent was arrested and charged with (a) Count 1 - violating Health
19 and Safety Code 11350(a), possession of a controlled substance (cocaine), a felony; (b) Count 2
20 - violating Vehicle Code Section 23152(a), driving under the influence of alcohol or drugs, or a
21 combination of both, a misdemeanor; and (c) Count 3 - violating Vehicle Code 23152(b), driving
22 with a 0.08% or higher blood alcohol, a misdemeanor.

23 18. Respondent entered a plea of guilty as to Counts 1 and 2. Count 3 was
24 dismissed pursuant to a plea agreement. Under Penal Code Section 1000, *et seq.*, judgment was
25 deferred for 24 months as to Count 1 (possession of a controlled substance) for which
26 Respondent was required to complete a deferred entry of judgment treatment program.
27 Respondent was convicted on her guilty plea as to Count 2 (driving under the influence of
28 alcohol or drugs, or a combination of both) and was sentenced to summary probation for 3 years,

1 required to pay \$1,665 in fines and fees and required to complete a 3-month first offender
2 alcohol program.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Unprofessional Conduct - Violation of Laws)**

5 19. Respondent is subject to disciplinary action under section 4301(j) in that
6 Respondent violated the laws of this state when on October 15, 2006, Respondent was in
7 possession of a controlled substance (methamphetamine), a felony, in violation of Health and
8 Safety Code 11350(a) and Business & Professions Code, section 4060.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(Unprofessional Conduct - Use of Dangerous Drugs or Alcoholic Beverages)**

11 20. Respondent is subject to disciplinary action for unprofessional conduct
12 under section 4301(h) in that on October 15, 2006, Respondent operated a motor vehicle while
13 under the influence of alcohol or drugs, or both, in a manner that was potentially injurious to
14 herself, and/or the public.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(March 26, 2007 Conviction for DUI on October 15, 2006)**

17 21. Respondent is subject to disciplinary action for unprofessional conduct
18 under section 4301(l) for conviction of a crime that is substantially related to her qualifications,
19 functions and duties as a pharmacy technician in that on March 26, 2007, Respondent was
20 convicted of driving under the influence of alcohol.

21 **PRAYER**

22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

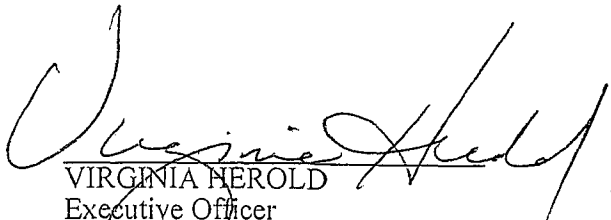
24 1. Revoking or suspending Pharmacy Technician Registration Number TCH
25 40762, issued to Margarie R. Saucedo.

26 2. Ordering Margarie R. Saucedo to pay the Board of Pharmacy the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

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

DATED: 8/2/09



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

SD2009803621
70199161.wpd