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Board of Pharmacy

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Makasini Plaintiff/Petitioner(s) VS. Board of Pharmacy Defendant/Respondent(s) (Abbreviated Title)	No. RG12620923 Application Re: Stay Granted

The ex parte application of petitioner Makasini to stay administrative action is GRANTED.

The Board of Pharmacy's decision to revoke and terminate Pharmacy Technician License No. TCH 43918 issued to Anasilini Makasini is STAYED through Monday, October 1, 2012.

The court orders that Anasilini Makasini must not perform work that requires a Pharmacy Technician License through Monday, October 1, 2012. Kaiser Permanente may continue to employ Anasilini Makasini during this period.

The court anticipates that it will hear and resolve the petition of Anasilini Makasini challenging the Board of Pharmacy's decision to revoke and terminate her Pharmacy Technician License before Monday. October 1, 2012.

Dated: 04/27/2012

Facsimile

Judge Evelio Grillo

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

In the Matter of the Accusation Against:	Case No. 3643
ANASILINI RUBY MAKASINI	OAH No. 2011060175
Pharmacy Technician Registration No. TCH 43918	
Respondent.	

DECISION AND ORDER

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

This decision shall become effective on March 14, 2012.

It is so ORDERED on February 13, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

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:	
ANASILINI RUBY MAKASINI	Case No. 3643
Pharmacy Technician Registration No. TCH 43918,	OAH No. 2011060175
Respondent.	

PROPOSED DECISION

This matter was heard before Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings, in Oakland, California, on December 12, 2011.

Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, was represented by Joshua A. Room, Deputy Attorney General.

Respondent Anasilini Ruby Makasini represented herself.

The matter was submitted for decision on December 12, 2011.

FACTUAL FINDINGS

1. On August 9, 2002, the Board of Pharmacy issued pharmacy technician registration number TCH 43918 to respondent Anasilini Ruby Makasini. Respondent's registration has been renewed through May 31, 2012.

2. Between November 29, 2006, and July 31, 2009, respondent suffered four convictions – three for driving under the influence of alcohol and one for hit and run – and twice admitted to police officers that she had used methamphetamine. Each of these incidents is described below.

3. At about 9:45 p.m. on November 29, 2006, an Alameda County deputy sheriff responded to a call of an argument between two women at a residence where respondent rented a room. The deputy observed respondent yelling at, and attempting to charge, her sister. He observed that respondent had slurred speech and bloodshot eyes. She admitted she had drunk two bottles of Smirnoff Ice earlier in the evening. The deputy found bottles of

beer and alcohol on the floor of respondent's room. Based on the statements of witnesses, the deputy concluded respondent was habitually drunk in the presence of her children and placed her under arrest. Once she was placed in the patrol car, respondent kicked the doors, yelled, cried and chanted. She began twitching uncontrollably and had trouble sitting still. She was sweating profusely. As a result, the arresting deputy suspected she was under the influence of a central nervous system stimulant. When questioned, respondent admitted she had used methamphetamine on November 28 and that she had been using since February 2006.

4. a. On May 21, 2007, respondent was convicted, on her plea of no contest, of a misdemeanor violation of Vehicle Code section 20002, subdivision (a), hit and run with property damage. Upon conviction, imposition of sentence was suspended and respondent was placed on probation for three years on terms that included one day in jail, with credit for time served, and payment of a $120 fine.

b. The incident that resulted in this conviction occurred at about 7:00 p.m. on March 28, 2006, when respondent struck a parked car. After parking her car, respondent walked away from the scene. She later went to the Hayward Police Department to report the accident. She said she had fallen asleep while driving and drifted into the other car. She said she panicked and left the scene because she did not know what to do.

5. On October 18, 2007, sheriff's deputies went to the home of Carl Shaff to serve an arrest warrant. Respondent, who has had a relationship with Shaff since 2006, was in the home when Shaff was arrested. While searching the home, the deputies found two glass pipes commonly used to smoke methamphetamine. Respondent admitted to one of the deputies that she had used the pipes for that purpose. She said she had last smoked methamphetamine on October 4, 2007. Respondent was arrested on three outstanding misdemeanor warrants and for a violation of Health and Safety Code section 11364, subdivision (a), possession of narcotics paraphernalia.

6. a. On November 29, 2007, respondent was convicted, on her plea of no contest, of a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving with a blood alcohol level of 0.08 percent or higher. Upon conviction, imposition of sentence was suspended and respondent was placed on probation for three years on terms that included 30 days in jail, which she was permitted to serve in a work alternative program, payment of a $1,760 fine, and completion of an 18-month second offender DUI program.

b. The incident that resulted in this conviction occurred at about 1:20 a.m. on May 17, 2007. Respondent was stopped for a minor traffic violation and was found to be under the influence of alcohol. Respondent said she had drunk two beers about two and a half hours earlier. Several breathalyzer tests done in the next 20 minutes gave readings of 0.10 to 0.13 percent.

7. a. Also on November 29, 2007, respondent was convicted, on her plea of no contest, of another misdemeanor violation of Vehicle Code section 23152, subdivision

(b), driving with a blood alcohol level of 0.08 percent or higher. She admitted to a special allegation of driving with a blood alcohol level of 0.15 percent or higher. Upon conviction, imposition of sentence was suspended and respondent was placed on probation for three years on the same terms and conditions set forth above. Jail time and completion of the DUI program for both convictions were to be served concurrently.

b. The incident that resulted in this conviction occurred at about 11:30 p.m. on September 2, 2007. After being stopped for running a red light, respondent was found to be under the influence of alcohol. Preliminary blood alcohol screening tests showed readings above 0.20 percent.

8. a. On July 31, 2009, respondent was convicted by a jury of misdemeanor violations of Vehicle Code sections 23152, subdivision (a), driving under the influence of alcohol; 23152, subdivision (b), driving with a blood alcohol level of 0.08 percent or more; and 14601.1, subdivision (a), driving with a suspended or revoked license. Upon conviction, imposition of sentence was suspended and respondent was placed on four years of probation on terms that included 180 days in jail, attendance at two AA meetings a week for one year, and completion of another 18-month second offender DUI program.

b. The incident that resulted in this conviction occurred about 10:00 p.m. on January 7, 2008. Sheriff's deputies responded to a call of a man and woman arguing in the street in front of respondent's and Shaff's residence. On arrival, the reporting party told a deputy that the woman had just driven away in a blue BMW. A few minutes later, another deputy saw the car respondent was driving nearby. He followed respondent, who parked in front of her residence. The officer found respondent to be under the influence of alcohol. Other deputies found Shaff in the residence. He too was intoxicated. Respondent told one deputy she and Shaff had been drinking in a bar before they got into an argument. Shaff also told one of the deputies that he and respondent had been drinking together before their argument. Respondent was arrested for driving under the influence. Shaff was arrested on a number of charges, one of which was public intoxication.

9. Acts involving dishonesty and the use of alcoholic beverages in a dangerous or injurious manner are causes to discipline the license of a pharmacy technician. (Bus. & Prof. Code, § 4301, subds. (f) and (h).) Three of respondent's convictions involved the dangerous use of alcohol. One, the hit and run, involved dishonesty. All of them evidence a present or potential unfitness to perform the duties of a licensee in a manner consistent with the public health, safety or welfare. (Cal. Code Regs., tit. 16, § 1770.) Therefore, the convictions set forth above in Findings 4a, 6a, 7a and 8a, are all of crimes substantially related to the qualifications, functions and duties of a pharmacy technician.

10 Respondent is a poor historian, especially concerning dates; some of her testimony was vague, some of it was conflicting. But in a nutshell, respondent maintains that her drinking began in response to a series of difficult events in her life and ended about two years later. In early 2006, after being unhappy in her marriage for many years, in part because her husband was mentally abusive, she left her husband and six children. During

this same general time frame, respondent's father was dying. But she could not bring herself to go see him – she did not want to see the pain he was going through. In addition, respondent was diagnosed with bipolar disorder and began taking medication for it. Also, she was experiencing then-undiagnosed stomach pain that repeatedly put her in the hospital and caused her to take disability leave from her job. Finally, a couple of weeks after she left her husband, her father passed away. Respondent says she turned to alcohol "for my pain." Respondent stated she never used alcohol before she left her husband.

11. Although she acknowledges drinking, respondent denied some of the specific allegations concerning her drinking. And although she testified she voluntarily entered a chemical dependency program, she stated that when she entered the program she did not think she had a drinking problem. Rather, she said, she entered the program "for my children."

12. Concerning the November 29, 2006 incident described above in Finding 3, respondent denies she had been drinking the evening of the argument with her sister. Although the reporting deputy stated respondent said she had drunk two bottles of Smirnoff Ice earlier in the evening, respondent denies she told him this. She said she told him she had been drinking Smirnoff earlier in the day, not that evening, and asserts that the alcohol was no longer in her system when she was arguing with her sister. Respondent believes the description of her having slurred speech and bloodshot eyes is inaccurate. She says her aggressive behavior that night was due to anger with her sister, not to alcohol. Respondent also maintained that the beer cans found on the floor of her room were not hers – they were a friend's, and they had been there for more than a week. (In another portion of the hearing, however, respondent admitted there had been a birthday party in her room that night, and that she did drink beer.) And respondent denies telling the deputy that she had been using methamphetamine for the past nine months. The deputy, she asserted, "made it up." She maintains she has never used methamphetamine and also denies telling the deputy involved in the October 18, 2007 incident that she had been using the drug.

13. Respondent's assertion that she has never used methamphetamine is supported by the testimony of Carl Shaff, who has been in a relationship with respondent since 2006. He maintains he and respondent never used methamphetamine and that the drug allegations against her are "just nonsense." She told him the pipe the deputies found in his home came from a friend. Respondent's assertion is also supported in a character letter from her sister, who was involved in the November 29, 2006 incident. She wrote, "The notion that she used methamphetamine, and was a habitual user is absurd. My sister and I are very close; I was around her every day. She has never used any illegal drugs, ever."

14. Despite the supportive statements of Shaff and respondent's sister, respondent's assertions that she never used methamphetamine, and that she never told sheriff's deputies she did, are not credible. On both occasions, on November 29, 2006, and a year later on October 18, 2007, respondent not only told deputies she had used methamphetamine, but she gave each of them a specific date when she had last used the drug – one a day earlier, one two weeks earlier. That specific dates were provided is an indication

that the deputies did not misunderstand or misconstrue something respondent said. And in neither instance would the deputies have reason to "ma[k]e it up." In both incidents the deputies had cause to arrest respondent unrelated to methamphetamine use. In the first incident, respondent had already been arrested for intoxication when her behavior led the deputy to believe she was also under the influence of a stimulant and to question her about it. And in the second incident, respondent was being arrested on outstanding warrants and for admitted possession of narcotics paraphernalia. An admission of drug use would add nothing to the charges.

15. Respondent is 46 years old. She has been employed as a pharmacy technician at Kaiser Hospital in Fremont for six years, although she has not actually worked there that long because of periods of disability leave. Before leaving on her most recent disability leave in May 2011, respondent served as a co-lead worker. She does not receive additional pay for this position but bears some supervisory responsibilities. People look up to her in the position, but it can cause some stress.

16. Respondent's first period of disability coincides with all of the events described in Findings 2 through 8 except her January 2009 conviction. She says the stomach pain she was having caused her to be on disability for most of 2006, all of 2007, and part of 2008. When her pain was finally diagnosed as coming from scar tissue from a prior surgery she had corrective surgery and "was back to work in a week." She continued working until May 2011, when she again went on leave due to an injury causing back and chest pain. She is currently scheduled to return to work in January 2012. She is anxious to return to work but does not know if she will be physically able to do so.

17. The chemical dependency program referred to above in Finding 11 was a six-month outpatient program through Kaiser. She says she began the program in November 2007 and "returned to work" after completing it in April 2008. It is unclear how this return to work related to her return to work after abdominal surgery.

18. As part of the criminal probation imposed on July 31, 2009, respondent was required to take an 18-month second offender DUI program. She enrolled in that program in May 2010. She did not explain why it took more than nine months to begin the program. She is scheduled to complete the program in April 2012. Also unexplained is why the 18-month program will take nearly two years to complete. As part of the program, respondent has participated in 35 90-minute group counseling sessions and 26 15-minute individual counseling sessions, and she has attended 44 self-help meetings. Respondent testified she used to attend AA meetings "a lot," almost daily. Now she attends "here and there."

19. Respondent and several of those who submitted character letters on her behalf assert she has been sober for more than three years. But respondent is unable to provide a specific sobriety date. In fact, her testimony about this was quite vague. She initially said her sobriety date was July 31, 2008. But when asked again, she said it was "probably January 2008" or "maybe the end of February 2008." When asked why she had previously

said her sobriety date was July 31, 2008, respondent said that is when she "slowed down" her drinking. Asked when she fully stopped drinking she said it was at the end of January 2008, after she had a glass of wine at a wedding.

20. Respondent continues to live with Carl Shaff. Four of her children, ages 14 through 23, now live with them. Although respondent left her husband in 2006, they have not divorced. But respondent asserts she has recently filed for divorce. Shaff is an admitted alcoholic who has his own DUI conviction. He tries to maintain his sobriety – and is successful when he regularly attends AA meetings – but has had a series of relapses over the years. He is not currently sober, admitting to having had four beers about a week before the hearing. He sometimes goes to AA meetings with respondent.

21. Respondent testified she still takes some medication for her bipolar condition.

22. The board has incurred legal fees of $9,137.50 in the prosecution of this case. Considering the number of incidents and convictions involved, the 55 hours of time expended on the case are found to be reasonable, as are the resulting fees.

LEGAL CONCLUSIONS

1. Business and Professions Code section 490 provides that a licensee may be disciplined if he or she is convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed profession. Business and Professions Code section 4301, subdivision (l), provides that a pharmacy license may be suspended or revoked if the licensee was convicted of a substantially related crime.

2. First Cause for Discipline – Cause for disciplinary action against respondent exists under Business and Professions Code sections 490 and 4301, subdivision (l), by reason of the matters set forth in Findings 4a and 9. (May 21, 2007 conviction.)

3. Second Cause for Discipline – Cause for disciplinary action against respondent exists under Business and Professions Code sections 490 and 4301, subdivision (l), by reason of the matters set forth in Findings 6a and 9. (First November 29, 2007 conviction.)

4. Third Cause for Discipline – Cause for disciplinary action against respondent exists under Business and Professions Code sections 490 and 4301, subdivision (l), by reason of the matters set forth in Findings 7a and 9. (Second November 29, 2007 conviction.)

5. Fourth Cause for Discipline – Cause for disciplinary action against respondent exists under Business and Professions Code sections 490 and 4301, subdivision (l), by reason of the matters set forth in Findings 8a and 9. (July 31, 2009 conviction.)

6. Fifth Cause for Discipline –Business and Professions Code section 4301, subdivision (f), provides that a pharmacy license may be suspended or revoked if the licensee has committed any act involving dishonesty. Cause for disciplinary action against

respondent exists under this section by reason of the matters set forth in Findings 4a and 9. (Hit and run conviction.)

7. Sixth Cause for Discipline –Business and Professions Code section 4301, subdivision (h), provides that a pharmacy license may be suspended or revoked if the licensee has used alcohol in a manner that is dangerous or injurious to oneself or any other person. Cause for disciplinary action against respondent exists under this section by reason of the matters set forth in Findings 6b, 7b and 8b. (Driving under the influence.)

8. Seventh Cause for Discipline –Business and Professions Code section 4301, subdivision (j), provides that a pharmacy license may be suspended or revoked if the licensee has violated any statutes regulating controlled substances and dangerous drugs. Subdivision (o) provides that a pharmacy license may be suspended or revoked if the licensee has violated any laws or regulations regulating pharmacy. Respondent's admitted use of methamphetamine and possession of drug paraphernalia demonstrates violations of controlled substance laws, i.e., Health and Safety Code sections 11170, 11364, and 11550 (use and administration of a controlled substance, possession of drug paraphernalia). Cause for disciplinary action against respondent thereby exists under subdivision (j) by reason of the matters set forth in Findings 3, 5 and 14. It was not established that cause for discipline also existed under subdivision (o) in that it was not shown that respondent violated laws or regulations regulating pharmacy.

9. Eighth Cause for Discipline –Business and Professions Code section 4301 provides that a pharmacy license may be suspended or revoked if the licensee has been guilty of unprofessional conduct. The matters set forth in Findings 2 through 8 demonstrate that respondent was guilty of unprofessional conduct. Cause for disciplinary action against her thereby exists under this section.

10. There is ample cause to revoke respondent's pharmacy technician registration. The only remaining question is whether she should be provided the opportunity to retain her registration on probationary terms and conditions.

11. Respondent's drug and alcohol use occurred during a relatively confined period of her life, from about April 2006 until sometime in 2008. This was a period of great stress and personal upheaval for respondent, marked by physical pain, emotional pain, the death of her father, leaving her long marriage, and having to take disability leave from her job. That she has apparently now been alcohol-free for about three years is an encouraging sign. But there are also indications respondent's recovery is a fragile one. Some of the issues that led her to start drinking in 2006 remain unresolved: she is again in physical pain; she is again on disability leave; when she does return to work it will be into a co-lead position that provides some stress for her; she continues to take medication for bipolar disorder; she is not yet divorced from her mentally abusive husband, and now that she has filed for divorce may be facing difficult child custody and related issues. Also making her recovery state a fragile one is the fact she lives with an alcoholic who, though he supports her sobriety, continues to drink himself. On top of that, respondent's own attitude toward her

recovery is troubling: she is unable to identify a firm sobriety date; has stated that she does not believe she had a drinking problem and that she entered a chemical dependency program only for her children's sake; and her compliance with the requirement of her most recent criminal probation that she complete an 18-month DUI course has been rather lax.

There are also concerns about respondent's honesty. She denied she ever used methamphetamine and denied she told two sheriff's deputies she had. These denials were found to be unconvincing. Respondent also denied some of the circumstances of her drinking in the November 29, 2006 incident, but then contradicted that denial in another part of her testimony. When these concerns are superimposed upon the fragile state of respondent's alcohol recovery, there is little reason to feel confident that she could successfully comply with probationary terms imposed by the board. Until respondent is able to be truthful with herself about her past drug and alcohol use, probation is not an appropriate option.

12. Business and Professions Code section 125.3 provides that a licensee found to have violated the licensing law may be required to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Pursuant to section 125.3, cause exists to require respondent to reimburse the board its legal costs of $9,137.50.

ORDER

Pharmacy technician registration number TCH 43918 issued to respondent Anasilini Ruby Makasini is revoked pursuant to Legal Conclusions 2 through 9.

DATED: January 9, 2012

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **ANASILINI RUBY MAKASINI** **aka Salini Makasini, Anasilini Pohahau** **256 Laurel Avenue** **Hayward, CA 94541** **Pharmacy Technician License No. TCH 43918** Respondent.	Case No. 3643 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about August 9, 2002, the Board of Pharmacy issued Pharmacy Technician License No. TCH 43918 to Anasilini Ruby Makasini aka Salini Makasini, Anasilini Pohahau (Respondent). The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, unless renewed.

JURISDICTION

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

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

5. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 118(b) of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Section 4402(a) of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402(e) of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

7. Section 4301 of the Code provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of "unprofessional conduct," defined to include, but not be limited to, any of the following:

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

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be 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, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

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

9. California Code of Regulations, title 16, section 1770, states:

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

10. Health and Safety Code section 11170 provides that no person shall prescribe, administer, or furnish a controlled substance for himself or herself.

11. Health and Safety Code section 11364, in pertinent part, makes it unlawful to possess an opium pipe or other paraphernalia used to inject or smoke controlled substances.

12. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any person to use or be under the influence of any controlled substance in Schedule II (Health and Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V, except when administered by or under the direction of an authorized licensee.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation of the licensing act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

CONTROLLED SUBSTANCES / DANGEROUS DRUGS

14. Section 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

15. Section 4022 of the Code states, in pertinent part:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

16. **Methamphetamine** is a Schedule II controlled substance as designated by Health and Safety Code section 11055(d)(2) and a dangerous drug as designated by Business and Professions Code section 4022. It is a stimulant drug.

FACTUAL BACKGROUND

17. On or about March 28, 2006, Respondent drove her vehicle into a parked car, causing damage to both vehicles. After surveying the damage, Respondent fled the scene of the accident on foot. Respondent later reported to police that she had fallen asleep at the wheel.

18. On or about November 29, 2006, police officers responded to a domestic disturbance involving an altercation between Respondent and another woman. Respondent exhibited signs of alcoholic intoxication, and witnesses reported that Respondent was repeatedly intoxicated in front of her children. Respondent also admitted to having recently used **methamphetamine**, and to being a habitual user of **methamphetamine** since at least February 2006.

19. On or about May 17, 2007, Respondent was stopped by police while driving a vehicle with an expired registration but a current registration sticker. Respondent was driving, but could not produce a driver's license when requested. The officer(s) detected the smell of alcohol in the vehicle. Respondent failed field sobriety testing, and testing both in the field and upon arrival at the county jail showed her blood alcohol level to be above the legal limit of 0.08%.

20. On or about September 2, 2007, Respondent was stopped by police while driving a vehicle that failed to stop at a red traffic light. The officer(s) detected the smell of alcohol in the vehicle. Respondent failed field sobriety testing, and testing both in the field and upon arrival at the county jail showed her blood alcohol level to be above the legal limit of 0.08%.

21. On or about October 18, 2007, Respondent was present in a residence where police executed an arrest warrant for another occupant. During a search of the residence, police found two glass pipes with residue indicating their use for smoking **methamphetamine**. Respondent admitted that she had used the pipes found by the officer(s) to smoke **methamphetamine**.

22. On or about January 7, 2008, police officers responded to a domestic disturbance and while en route observed Respondent driving a vehicle away from the property. Police stopped the vehicle, and detected the smell of alcohol. Respondent also exhibited signs of intoxication.

FIRST CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

23. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about May 21, 2007, in the criminal case *People v. Anasilini R. Makasini*, Case No. 395496 in Alameda County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 17 of violating Vehicle Code section 20002(a) (Failure to stop/hit and run), a misdemeanor. The conviction was entered as follows:

a. On or about August 3, 2006, based on the conduct described in paragraph 17, Respondent was charged by criminal Complaint in Case No. 395496 with violating Vehicle Code section 20002(a) (Failure to stop/hit and run), a misdemeanor.

b. On or about November 31, 2006, based on the conduct described in paragraph 18, Respondent was separately charged by criminal Complaint in *People v. Salini Makasini*, Case No. 398440 in Alameda County Superior Court, with violating Penal Code section 273g (Lewd practices in presence of minor), a misdemeanor. On or about January 16, 2007, the proceedings in Case No. 398440 were consolidated with the proceedings in Case No. 395496.

b. On or about May 21, 2007, in Case No. 395496, Respondent pleaded no contest to violating Vehicle Code section 20002(a) (Failure to stop/hit and run), a misdemeanor. Per the plea agreement, the charges in Case No. 398440 were dismissed by the prosecutor.

c. On or about May 21, 2007, imposition of sentence was suspended in favor of a court probation of thirty-six (36) months on terms and conditions including time served of 1 day in county jail, fines and fees, and other standard terms and conditions.

SECOND CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

24. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about November 29, 2007, in the criminal case *People v. Salini Makasini*, Case No. 403437 in Alameda County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 19 of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, as follows:

a. On or about July 16, 2007, based on the conduct described in paragraph 19, Respondent was charged by criminal Complaint in Case No. 403437 with violating (1) Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, and (3) Vehicle Code section 12500(a) (Driving without valid license), a misdemeanor.

b. On or about November 29, 2007, Respondent pleaded no contest to the second count of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor. Counts one and three were dismissed pursuant to the plea. A prior petition to revoke probation in Case No. 395496 was also withdrawn as part of the plea agreement.

c. On or about November 29, 2007, imposition of sentence was suspended in favor of a court probation of thirty-six (36) months on terms and conditions including 30 days in county jail (3 days CTS) and an 18-month 2nd Offender Alcohol and Drug Program (concurrent with Case No. 405054, below), fines and fees, and other standard terms and conditions.

THIRD CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

25. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about November 29, 2007, in the criminal case *People v. Salini Makasini aka Anasilini Makasini*, Case No. 405054 in Alameda County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 20 of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a special allegation for having blood alcohol of 0.15% or more, as follows:

a. On or about September 26, 2007, based on the conduct described in paragraph 20, Respondent was charged by criminal Complaint in Case No. 405054 with violating (1) Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor.

b. On or about November 29, 2007, Respondent pleaded no contest to the second count of violating Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, and admitted to the special allegation for having blood alcohol of 0.15% or more. Court documents established her blood alcohol as 0.27%. Counts one and three were dismissed pursuant to the plea. Respondent also admitted to a violation of probation in Case No. 395496.

c. On or about November 29, 2007, imposition of sentence was suspended in favor of a court probation of thirty-six (36) months on terms and conditions including 30 days in county jail (3 days CTS) and an 18-month 2nd Offender Alcohol and Drug Program (concurrent with Case No. 403437, above), fines and fees, and other standard terms and conditions.

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FOURTH CAUSE FOR DISCIPLINE

(Conviction of Substantially Related Crime(s))

26. Respondent is subject to discipline under section 4301(l) and/or section 490 of the Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of substantially related crime(s), in that on or about July 31, 2009, in the criminal case *People v. Salini Makasini aka Anasilini Makasini*, Case No. 408068 in Alameda County Superior Court, Respondent was convicted on the basis of the conduct described in paragraph 22 of violating (1) Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor, along with special allegations for two prior convictions under Vehicle Code section 23152(b), as follows:

a. On or about February 1, 2008, based on the conduct described in paragraph 22, Respondent was charged by criminal Complaint in Case No. 408068 with violating (1) Vehicle Code section 23152(a) (Driving under influence of alcohol or drugs), a misdemeanor, (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a special allegation for having blood alcohol of 0.15% or more, and (3) Vehicle Code section 14601.1(a) (Driving when privilege is suspended or revoked), a misdemeanor, and with having two prior convictions (both on November 29, 2007) under Vehicle Code section 23152(b).

b. On or about July 31, 2009, following a jury trial, Respondent was convicted of all charges, allegations, and priors. Court documents established her blood alcohol as 0.16%.

c. On or about July 31, 2009, imposition of sentence was suspended in favor of a court probation of forty-eight (48) months on terms and conditions including 180 days in county jail (3 days CTS), documented attendance at AA two times a week for a year, another 18-month 2nd Offender Alcohol and Drug Program, fines and fees, and other standard terms and conditions.

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FIFTH CAUSE FOR DISCIPLINE

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

27. Respondent is subject to discipline under section 4301(f) of the Code, in that, as described in paragraphs 17 to 26, on one or more occasions Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption.

SIXTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance and/or Alcohol)

28. Respondent is subject to discipline under section 4301(h) of the Code, in that Respondent, as described in paragraphs 17 to 26, administered a controlled substance to herself and/or used alcoholic beverages in a dangerous or injurious manner.

SEVENTH CAUSE FOR DISCIPLINE

(Self-Administration/Use of Controlled Substance/Drug Paraphernalia)

29. Respondent is subject to discipline under section 4301(j) and/or (o) of the Code, and/or Health and Safety Code section(s) 11170, 11364, and/or 11550, in that Respondent, as described in paragraphs 18 and 21, self-administered/used, conspired to self-administer/use, and/or assisted in/abetted self-administration/use, of a controlled substance, without prescription, and/or possessed, conspired to possessed, or assisted/abetted possession of drug paraphernalia.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

30. Respondent is subject to discipline under section 4301 of the Code in that, as described in paragraphs 17 to 29, Respondent engaged in unprofessional conduct.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 43918, issued to Anasilini Ruby Makasini aka Salini Makasini, Anasilini Pohahau (Respondent);

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 8/11/11

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

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