

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

In the Matter of the Accusation Against:

**MARY ANDREASYAN**

Pharmacy Technician Registration  
No. TCH 50143,

Respondent.

Case No. 4014

OAH No. 2014030927

**DECISION AFTER REMAND**

This matter came on regularly for hearing on July 10, 2014, in Los Angeles, California, before Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California. Complainant Virginia Herold was represented by Deputy Attorney General Antonio Lopez, Jr. Respondent Mary Andreasyan was present and was represented by Alexander W. Kirkpatrick, Attorney at Law.

Oral and documentary evidence was presented. The record was left open until August 11, 2014 to allow Respondent to submit expungement documents, and for the parties to submit closing and reply briefs. Complainant's closing brief was marked as Exhibit 6 for identification, but was not admitted into evidence. On August 11, 2014, Exhibit A (Respondent's trial brief) was marked for identification, but was not admitted into evidence; Exhibits B and C (expungement documents) were marked for identification and were admitted into evidence. The matter was submitted for decision on August 11, 2014.

On October 13, 2014, the California State Board of Pharmacy (Board) adopted the administrative law judge's September 10, 2014, Proposed Decision, which became effective on November 12, 2014.

On August 3, 2018, the Superior Court of California, County of Sacramento (Court) issued a judgment remanding this matter to the Board in Case No. 34-2014-80001971. The Board was directed to set aside its prior Decision and reconsider the action in light of the Court's ruling. Specifically, the Court found that the Board's findings concerning the substantial relationship of Respondent's convictions were inadequate because they

merely stated conclusion without providing any supporting reasoning that would allow the Court to review the analysis.

The Board, having now reviewed the record, including the transcript, and the written argument from both parties, sets aside its prior decision and issues this one.

## FACTUAL FINDINGS

1. The Accusation was issued on February 22, 2012, by Complainant Virginia Herold in her official capacity as then Executive Officer of the Board. Respondent filed a request for a hearing.

2. On September 11, 2003, the Board issued pharmacy technician registration number TCH 50143 to Respondent. She has had no prior disciplinary actions taken against her license. The pharmacy technician registration was in full force and effect at all times relevant herein.

3. Pharmacy technicians routinely dispense medications under the general supervision of a pharmacist. They have regular access to prescription medications, including controlled substances. A pharmacy technician, in a typical pharmacy setting, assists the pharmacists in non-discretionary tasks, and handles confidential patient personal, medical and financial information. A pharmacy technician may receive patients' prescriptions and confidential medical, personal, and financial information for record keeping, billing insurance and/or collecting payments. In a retail setting, a pharmacy technician accepts cash and credit cards from customers and has a significant amount of public contact. A pharmacy technician may pull medications from the shelves for filling and counting, order medications, or put away arriving shipments of medication stock. A pharmacy technician is subject to the supervision and control of a pharmacist, and must take direction from the pharmacist in performance of such duties. In the event a pharmacy technician makes or identifies a mistake, his or her ability to recognize, acknowledge, and correct any error, can be crucial to patient safety. The work done by pharmacy technicians involves trust, honesty, integrity, the ability to follow instructions, and good judgment.

### *Respondent's 2009 Criminal Conviction*

4. On December 15, 2009, in the Superior Court of California, County of Los Angeles, in case number 8GN01473, Respondent<sup>1</sup> pled nolo contendere to and was convicted of violating Vehicle Code section 12500, subdivision (a) (driving while having a suspended license), a misdemeanor. The court found that there was a factual basis for Respondent's plea and placed Respondent on summary probation for a period of 12

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<sup>1</sup> Respondent is known in those proceedings as Mariam Andreyan.

months, ordered her to perform 74 hours of community service, and ordered her to pay fines.

5. The facts and circumstances surrounding the 2009 conviction are that, on March 4, 2008, a Glendale police officer conducted a routine traffic stop, after running a records check on Respondent's vehicle. The officer was advised that Respondent had an outstanding warrant for a failure to appear in court, and Respondent admitted to him that she was driving with a suspended license and she was placed under arrest.

6. On July 1, 2014, the court set aside Respondent's plea, entered a plea of not guilty, and dismissed the 2009 conviction case pursuant to Penal Code section 1203.4.

#### *Respondent's 2010 Criminal Conviction*

7. On January 7, 2010, in the Superior Court of California, County of Los Angeles, in case number 7PS04187, Respondent pled guilty to and was convicted of violating Penal Code section 602, subdivision (k) (entering lands for the purpose of interfering with, obstructing, or injuring any lawful business), a misdemeanor ("2010 conviction"). When the criminal charges were originally brought in August of 2007, Respondent was charged with violating Penal Code section 487, subdivision (a) (grand theft). Pretrial hearings were held almost monthly through 2008, and in one such hearing, the court's certified docket states, "Balance owed for a civil compromise is \$3200.00." On January 7, 2010, when the court accepted the plea, the court found that there was a factual basis for Respondent's plea and placed Respondent on summary probation for a period of two years. As part of her criminal probation, the court also ordered her to pay fines and to stay at least 100 yards away from the Rite Aid Pharmacy in Pasadena.

8. At hearing, Respondent stipulated that this conviction arose from her employment at the Rite Aid Pharmacy and that, as a part of the criminal probation in that matter, Respondent paid \$3,200 in restitution to Rite Aid.

9. The facts and circumstances of the 2010 conviction are that, from March 5, 2007, through May 24, 2007, Respondent took approximately \$5,300 from Rite Aid Pharmacy in Pasadena, California, where she was employed as a pharmacy technician. Over a three-month period, Respondent transacted 25 false refund transactions ranging from \$100 to \$300 each, without customers being present, and then Respondent pocketed the refunded monies. On June 11, 2007, Respondent called and informed her supervisor at Rite Aid Pharmacy that she wished to be terminated and that she would not be returning to employment at Rite Aid Pharmacy. Respondent told her supervisor, "Go ahead and terminate me." An investigation was conducted after a financial discrepancy came to light. Respondent had worked at Rite Aid Pharmacy since February 2004.

10. On June 13, 2014, Respondent filed a petition for dismissal of this conviction, requesting that the court set aside Respondent's plea, enter a plea of not guilty, and dismiss the case pursuant to Penal Code section 1203.4.

### *Respondent's Case*

11. Respondent testified at the hearing. She did not take responsibility for her actions, express remorse, or discuss the facts and circumstances surrounding her criminal convictions. Respondent contended that she has been rehabilitated as demonstrated by the fact that in the seven years following her separation from Rite Aid Pharmacy, she has had no other criminal violations or disciplinary actions, has not been the subject of any other investigations of wrong-doing, and each of her convictions were dismissed pursuant to Penal Code section 1203.4. After leaving Rite Aid Pharmacy, she worked as a pharmacy technician at CVS Pharmacy in Hollywood, California, for three years, without incident. After leaving that job, she began working as a pharmacy technician at Aids Healthcare Foundation (AHF), a pharmacy which specializes in serving individuals with HIV. Respondent has been at AHF for four years, and was employed there at the time of hearing. After working at AHF on a per-diem basis for two and a half years, Respondent was offered a full-time pharmacy technician job there with benefits. Her duties include typing up labels and filling prescriptions, handling co-payments for medications, and obtaining authorization to fill prescriptions from the Medi-Cal program, on behalf of pharmacy customers. Respondent's job at AHF involves "a lot of emotional interaction." She particularly enjoys providing "friendship and comfort" to her customers and is "not there just to make money."

12. Respondent focuses on her history since the 2007 misconduct at the Rite Aid Pharmacy as the relevant period, but the more pertinent question is how Respondent behaves while she is not subject to scrutiny – while she is not facing criminal charges, not facing repercussions from violations of her criminal probation, and/or not facing disciplinary action against her license. (*In re Gossage* (2000), 23 Cal.4th 1080.) During those periods, Respondent was aware of the impact of her potential misconduct, was expected to behave well and had incentive to do so, so the significance of good behavior during those times is diminished.

### *Costs*

13. The Board incurred prosecution costs in the amount of \$7,322.50. These costs are reasonable pursuant to Business and Professions Code section 125.3.

14. No evidence regarding Respondent's financial ability to pay a cost recovery award was presented at the hearing.

## LEGAL CONCLUSIONS

*Qualifications, Function, and Duties of a Pharmacy Technician*

1. Business and Professions Code<sup>2</sup> section 4038 provides that a “Pharmacy technician’ means an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115.”
2. Section 4115 provides, in part, the following:
  - (a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.  
[¶]...[¶]
  - (e) No person shall act as a pharmacy technician without first being licensed by the board as a pharmacy technician.
3. The functions and duties of a pharmacy technician require trust, honesty, integrity, the ability to follow instructions, and good judgment, as discussed in Factual Finding 3 above.

*Statutory Authority to Suspend or Revoke a Pharmacy Technician License*

4. Section 490 provides, in pertinent part, the following:
  - (a) [A] board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.  
[¶]...[¶]
  - (c) A conviction . . . means a plea or verdict of guilty or a conviction following a plea of nolo contendere. ...
5. Section 4301 authorizes the Board to take disciplinary action against any licensee who is guilty of “unprofessional conduct.” Unprofessional conduct includes, but is not limited to, 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.

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<sup>2</sup> Unless otherwise specified, all section references are to the Business and Professions Code.

[¶]...[¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under . . . [the Pharmacy Law].

[¶]...[¶]

(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.

[¶]...[¶]

### *Burden of Proof and Standards Applied*

3. In this Accusation proceeding, the burden of proof is on Complainant to establish alleged violations. The standard applied here was a demonstration by “clear and convincing proof to a reasonable certainty.” (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant established the charging allegations by 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. (See *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.) Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.)

4. The Board is guided by principles and statutes that mandate that whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public must be paramount. (Bus. & Prof. Code, §§ 4001.1 and 4313.)

### *Crimes Substantially Related to Qualifications, Functions or Duties*

5. Under California Code of Regulations, title 16, section 1770, a crime “shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

6. Respondent’s 2009 conviction for driving on a suspended license reflects a willingness to disregard legal requirements and poor judgment. As a pharmacy technician, following legal requirements is an essential function. Laws and regulations regarding the

practice of pharmacy exist to protect the public; failure to follow them exposes the public to risk. For example, the law requires a pharmacy technician to perform his or her functions with a pharmacist's supervision. If the pharmacy technician makes a mistake, a pharmacist's supervision allows the pharmacist to identify the mistake and prevent any patient harm. If the pharmacy technician disregards that law and functions without supervision, and makes a mistake, patients may be harmed.

7. Respondent's 2010 conviction for entering lands for the purpose of interfering with, obstructing, or injuring any lawful business also reflects a willingness to disregard legal requirements and poor judgment, but also evidences an intent to actively interfere, obstruct, or injure a business. In this case, that business was her employer, which was also a pharmacy. Particularly in the circumstances, where Respondent took things of value from her employer for personal gain, reflects that she lacked honesty and integrity. As explained in Factual Finding 3, a pharmacy technician has a great deal of access to dangerous drugs, some of which, particularly controlled substances, have tremendous street value if taken, and pose a significant risk to the public if not taken pursuant to a lawful prescription. In addition, a pharmacy technician has a great deal of access to personal, medical, and financial information which must be held in confidence. Taking or interfering with a pharmacy's drug supply or confidential information can cause a great deal of harm to patients, consumers, and, ultimately, society. Respondent's dishonest acts to interfere, obstruct, or injure her employer, which was also a pharmacy, are directly related to the qualifications, functions or duties of a pharmacy technician.

#### *Causes for Discipline*

8. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under sections 4300, 4301, subdivision (l), and 490, and California Code of Regulations, title 16, section 1770, as specified in the First Cause for Discipline, for conviction of crimes substantially related to the qualifications, functions, or duties of a registrant, as set forth in Factual Findings 1 through 10.

9. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under sections 4300 and 4301, subdivision (f), as specified in the Second Cause for Discipline, for committing acts involving dishonesty, fraud, or deceit, as set forth in Factual Findings 1 through 10.

10. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under sections 4300 and 4301, subdivision (o), as specified in the Third Cause for Discipline, for violating a provision of the pharmacy act, as set forth in Factual Findings 1 through 10.

*Rehabilitation Guidelines*

11. The Board has established guidelines for assessing rehabilitation in connection with determining license discipline for a licensee.

12. The Board's Disciplinary Guidelines describe some factors considers in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. (Cal. Code of Regs., tit. 16, § 1760.) No single one or combination of the factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one. The factors that are relevant here include:

- (1) Actual or potential harm to the public;
- (2) Actual or potential harm to any consumer;
- (3) Number and/or variety of current violations;
- (4) Nature and severity of the act(s), offense(s) or crime(s) under consideration;
- (5) Aggravating evidence;
- (6) Mitigating evidence;
- (7) Rehabilitation evidence;
- (8) Compliance with terms of any criminal sentence, parole, or probation;
- (9) Overall criminal record;
- (10) Evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code;
- (11) Time passed since the act(s) or offense(s);
- (12) 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;
- (13) Financial benefit to the respondent from the misconduct.

13. California Code of Regulations, title 16, section 1769, subdivision (c), states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:



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

### *Discussion*

9. The Board has considered all relevant mitigation and rehabilitation in making this determination. At the time of the 2014 hearing, approximately four-and-one-half years had passed since Respondent's 2010 criminal conviction involving Rite Aid Pharmacy. Respondent complied with the terms of her criminal probation, which ended in January 2012, and she established that she sought expungement of this criminal conviction immediately prior to the 2014 hearing. In addition, at hearing, she established that her 2009 criminal conviction for driving with a suspended license was dismissed the month prior to the hearing. Respondent provided no explanation of the circumstances surrounding the events that led to her two criminal convictions. She showed no remorse for her actions and presented little rehabilitation. Respondent's crime against Rite Aid Pharmacy was particularly and uniquely serious and related to her conduct as a pharmacy technician in that her actions occurred in the context of her employment as a pharmacy technician, demonstrated a willingness to deceive, and a penchant for dishonesty, when an opportunity to advance her personal interests by dishonest means presented itself in the very place where she was carrying out licensed activities. The relevancy of that misconduct, in context of her employment as a licensee in that facility, cannot be minimized or overlooked. Her evidence of rehabilitation is limited to her assertion that she has not gotten into trouble since her 2010 conviction and her dismissals pursuant to Penal Code section 1203.4. Respondent's theft of money was a crime of opportunity. Similar opportunities can arise at any time, particularly to a pharmacy technician. It is not possible to determine why she has not re-offended since her employment at Rite Aid Pharmacy. It might be because she has recognized the wrongfulness of her conduct and has changed her life, but her testimony did not convey that. It might also be that she did not re-offend because she was at risk of further consequences as a result of her criminal probation, because of this pending administrative proceeding against her license, or because the opportunity to re-offend simply has not presented itself.

10. While the Board considered Respondent's evidence of rehabilitation, public protection must take priority over rehabilitation and, where evidence of rehabilitation and

public protection are in conflict, public protection shall take precedence. (Bus. & Prof. Code, § 4313.) Based upon the evidence presented, severity of the misconduct against her employer, Rite Aid Pharmacy, where she held a position of trust, and the absence of rehabilitation presented, the public health, safety, welfare and interest cannot be adequately protected if Respondent is permitted to retain her license. Because of the length of time since the misconduct occurred, however, she will be eligible immediately to petition for reinstatement rather than upon delay.

*Costs*

11. Under section 125.3, the Board may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$7,322.50, as set forth in Factual Findings 13 and 14.

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ORDER

1. Pharmacy technician license number TCH 50143, issued to Respondent, Mary Andreyan, is revoked. Respondent shall relinquish her technician license to the Board within ten days of the effective date of this decision.

2. Respondent may petition the Board for reinstatement of her revoked technician license upon effective date of this Decision.

3. A condition of reinstatement shall be that Respondent becomes certified, as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board.

4. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$7,322.50 within 15 days of the effective date of this Decision. Alternatively, if the Board agrees to a payment plan, Respondent shall make payments in accordance with that plan.

This Decision shall become effective at 5:00 p.m. on April 1, 2019.

It is so ORDERED on February 28, 2019.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read "Victor Law", written over a horizontal line.

By

Victor Law, R.Ph.  
Board President

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

In the Matter of the Accusation Against:

Case No. 4014

**MARY ANDREASYAN**  
12945 Oxnard St., Unit 6  
Los Angeles, CA 91401

OAH No. 2014030927

Pharmacy Technician Registration No.  
TCH 50143

Respondent.

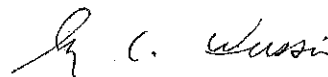
**ORDER DENYING RECONSIDERATION**

The Board of Pharmacy having read and considered respondent's petition for reconsideration of the board's decision effective November 12, 2014. NOW THEREFORE IT IS ORDERED that the petition for reconsideration is denied. The Board of Pharmacy's Decision and Order effective November 12, 2014 is the Board of Pharmacy's final decision in this matter.

Date: November 10, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STAN C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

**MARY ANDREASYAN**  
12945 Oxnard Street, #6  
Los Angeles, CA 91401

Pharmacy Technician Registration  
No. TCH 50143

Respondent.

Case No. 4014

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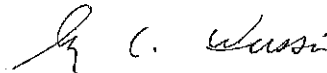
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on November 12, 2014.

It is so ORDERED on October 13, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

MARY ANDREASYAN,

Respondent.

Case No. 4014

OAH No. 2014030927

**PROPOSED DECISION**

This matter came on regularly for hearing on July 10, 2014, in Los Angeles, California, before Laurie R. Pearlman, Administrative Law Judge, Office of Administrative Hearings, State of California. Complainant Virginia Herold was represented by Deputy Attorney General Antonio Lopez, Jr. Respondent Mary Andreasyan was present and was represented by Alexander W. Kirkpatrick, Attorney at Law.

Oral and documentary evidence was presented. The record was left open until August 11, 2014 to allow Respondent to submit expungement documents, and for the parties to submit closing and reply briefs. Complainant's closing brief was marked as Exhibit 6 for identification, but was not admitted into evidence. On August 11, 2014, Exhibit A (Respondent's trial brief) was marked for identification, but was not admitted into evidence; Exhibits B and C (expungement documents) were marked for identification and were admitted into evidence. The matter was submitted for decision on August 11, 2014.

**FACTUAL FINDINGS**

1. The Accusation was issued by Complainant Virginia Herold in her official capacity as Executive Officer of the Board of Pharmacy (Board). Respondent filed a request for a hearing.

2. On September 11, 2003, the Board issued pharmacy technician registration Number TCH 50143 to Respondent. She has had no prior disciplinary actions taken against her license. The pharmacy technician registration was in full force and effect at all times relevant herein and will expire on October 31, 2014, unless renewed.

3. Pharmacy technicians routinely dispense medications under the general supervision of a pharmacist. They accept cash and credit cards from customers and have a significant amount of public contact. The work done by pharmacy technicians involves trust and honesty.

*Respondent's Criminal Convictions*

4. On December 15, 2009, in the Superior Court of California, County of Los Angeles, in case number 8GN01473, Respondent pled *nolo contendere* to and was convicted of violating Vehicle Code section 12500, subdivision (a) (driving while having a suspended license), a misdemeanor. The court found that there was a factual basis for Respondent's plea and placed Respondent on summary probation for a period of 12 months, ordered her to perform 74 hours of community service, and ordered her to pay fines. On July 1, 2014, the court set aside Respondent's plea, entered a plea of not guilty, and dismissed the case pursuant to Penal Code section 1203.4.

5. The facts and circumstances surrounding the 2009 conviction are that, on March 4, 2008, a Glendale police officer conducted a routine traffic stop, after running a records check on Respondent's vehicle. The officer was advised that Respondent had an outstanding warrant for a failure to appear in court, and Respondent admitted to him that she was driving with a suspended license and she was placed under arrest.

6. On January 7, 2010, in the Superior Court of California, County of Los Angeles, in case number 7PS04187, Respondent pled guilty to and was convicted of violating Penal Code section 602, subdivision (k) (entering for the purpose of interfering with a business), a misdemeanor. The court found that there was a factual basis for Respondent's plea and placed Respondent on summary probation for a period of two years, and ordered her to pay fines and to stay at least 100 yards away from the Rite Aid Pharmacy in Pasadena. On June 13, 2014, Respondent filed a petition for dismissal, requesting that the court set aside Respondent's plea, enter a plea of not guilty, and dismiss the case pursuant to Penal Code section 1203.4.<sup>1</sup>

7. The facts and circumstances of the 2010 conviction are that, on March 5, 2007 through May 24, 2007, Respondent took \$5,300 from Rite Aid Pharmacy in Pasadena, California, while she was employed there as a pharmacy technician. Over a three-month period, Respondent transacted 25 false refund transactions ranging from \$100 to \$300 each, without customers being present, and then Respondent pocketed the refunded monies. On June 11, 2007, Respondent informed her supervisor at Rite Aid Pharmacy that she wished to be terminated and that she would not be returning to employment at Rite Aid Pharmacy. An investigation was conducted after a financial discrepancy came to light. Respondent had worked at Rite Aid Pharmacy since February 2004.

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<sup>1</sup> Although the record was left open at Respondent's request to allow her to submit a copy of a signed order of expungement, no such document was received.

### *Respondent's Case*

8. Respondent testified at the hearing. She did not take responsibility for her actions, express remorse, or discuss the facts and circumstances surrounding her criminal convictions. Respondent contended that she has been rehabilitated as demonstrated by the fact that in the seven years that have ensued following her resignation from Rite Aid Pharmacy, she has had no other criminal violations or disciplinary actions, and has not been the subject of any other investigations of wrong-doing. After leaving Rite Aid Pharmacy, she worked as a Pharmacy Technician at CVS Pharmacy in Hollywood, California, for three years, without incident. After leaving that job, she began working as a Pharmacy Technician at Aids Healthcare Foundation (AHF), a pharmacy which specializes in serving individuals with HIV. Respondent has been at AHF for four years, and is currently employed there. After working there on a per-diem basis for two and a half years, Respondent was offered a full-time pharmacy technician job there with benefits. Her duties include typing up labels and filling prescriptions, handling co-payments for medications, and obtaining authorization to fill prescriptions from the Medi-Cal program, on behalf of pharmacy customers. Respondent's job at AHF involves "a lot of emotional interaction." She particularly enjoys providing "friendship and comfort" to her customers and is "not there just to make money."

### *Costs*

9. The Board incurred prosecution costs in the amount of \$7,322.50. These costs are reasonable pursuant to Business and Professions Code section 125.3.

10. No evidence regarding Respondent's financial ability to pay a cost recovery award was presented at the hearing.

## LEGAL CONCLUSIONS

### *Qualifications, Function, and Duties of a Pharmacy Technician*

1. Business and Professions Code<sup>2</sup> section 4038 provides that a "Pharmacy technician" means an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties, as specified in Section 4115."

2. Section 4115 provides, in part, the following:

(a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist.

[¶] . . . [¶]

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<sup>2</sup> Unless otherwise specified, all statutory references are to the Business and Professions Code.



(e) No person shall act as a pharmacy technician without first being licensed by the board as a pharmacy technician.

*Statutory Authority to Suspend or Revoke a Pharmacy Technician License*

3. Section 490 provides, in pertinent part, the following:

(a) [A] board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

[¶] . . . [¶]

(c) A conviction . . . means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . .

4. Section 4301 authorizes the Board to take disciplinary action against any licensee who is guilty of "unprofessional conduct." Unprofessional conduct includes, but is not limited to, the following:

[¶] . . . [¶]

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

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under . . . [the Pharmacy Law].

[¶] . . . [¶]

(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.

*Burden of Proof*

5. In this Accusation proceeding, the burden of proof is on Complainant to establish alleged violations by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Complainant

must establish the charging allegations by 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. (see *In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

*Crimes Substantially Related to Qualifications, Functions or Duties*

6. Under California Code of Regulations, title 16, section 1770, a crime “shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

7. Administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.)

*Rehabilitation Guidelines*

8. The Board has established guidelines for assessing rehabilitation in connection with determining license discipline for a licensee. California Code of Regulations, title 16, section 1769, subdivision (b) states:

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

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

9. Approximately four-and-one-half years have passed since Respondent’s 2010 criminal conviction, involving Rite Aid Pharmacy. Respondent has complied with the terms of probation, which ended in January 2012, and she established that this criminal conviction has been dismissed, and that she has sought expungement of her 2009 criminal conviction for driving with a suspended license. Respondent provided no explanation of the circumstances

surrounding the events that led to her two criminal convictions. She showed no remorse for her actions and presented little evidence of rehabilitation. Respondent's misdemeanor crime against Rite Aid Pharmacy was particularly serious in that her actions demonstrated a willingness to deceive, and a penchant for dishonesty, when an opportunity to advance her personal interests by dishonest means presented itself in the course of carrying out licensed activities. Her evidence of rehabilitation is limited to her assertion that she has not gotten into trouble since her 2010 conviction. However, Respondent's theft of money was a crime of opportunity. Similar opportunities can arise at any time. It is not possible to determine whether she has not re-offended since her employment at Rite Aid Pharmacy because she has recognized the wrongfulness of her conduct and has changed her life, or because the opportunity to re-offend simply has not presented itself. Based upon the evidence presented, the public health, safety, welfare and interest cannot be adequately protected if Respondent is permitted to retain her license.

10. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under sections 4301, subdivision (l), and 490, for conviction of crimes substantially related to the qualifications, functions or duties of a registrant, as set forth in Factual Findings 1 through 8.

11. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under Code sections 4300 and 4301, subdivision (f), for committing acts involving dishonesty, fraud, or deceit, as set forth in Factual Findings 1 through 8.

12. Cause exists to suspend or revoke Respondent's registration as a pharmacy technician under Code sections 4300 and 4301, subdivision (o), for violating a provision of the pharmacy act, as set forth in Factual Findings 1 through 8.

13. Under section 125.3, the Board may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$7,322.50, as set forth in Factual Findings 9-10.

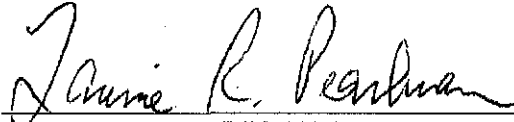
## ORDER

1. Pharmacy technician license number TCH 50143, issued to Respondent, Mary Andreasyan, is revoked. Respondent shall relinquish her technician license to the Board within ten days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of her revoked technician license for three years from the effective date of this Decision.

2. A condition of reinstatement shall be that Respondent becomes certified, as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board.

3. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$7,322.50 within 15 days of the effective date of this Decision. Alternatively, if the Board agrees to a payment plan, Respondent shall make payments in accordance with that plan.

DATED: September 10, 2014

A handwritten signature in cursive script, reading "Laurie R. Pearlman". The signature is written in black ink and is positioned above a horizontal line.

LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4014

13 **MARY ANDREASYAN**  
1554 N. Hobart Blvd., #8  
14 Los Angeles, CA 90027

**A C C U S A T I O N**

15 Pharmacy Technician Registration No. TCH  
50143

16 Respondent.

17  
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 September 11, 2003, the Board of Pharmacy (Board) issued Pharmacy  
23 Technician Registration No. TCH 50143 to Mary Andreasyan (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 October 31, 2012, 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.



1 whether the act is a felony or misdemeanor or not.

2 . . . .

3 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
4 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
5 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
6 substances or of a violation of the statutes of this state regulating controlled substances or  
7 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
8 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
9 The board may inquire into the circumstances surrounding the commission of the crime, in order  
10 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
11 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
12 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
13 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
14 of this provision. The board may take action when the time for appeal has elapsed, or the  
15 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
16 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
17 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
18 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
19 indictment.

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

#### 24 REGULATORY PROVISIONS

25 8. California Code of Regulations, title 16, section 1770, provides, in pertinent part:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license  
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

4 **COST RECOVERY**

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

9 **FIRST CAUSE FOR DISCIPLINE**

10 **(Convictions of Substantially-Related Crimes)**

11 10. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,  
12 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the  
13 grounds of unprofessional conduct, in that Respondent was convicted of a crime substantially  
14 related to the qualifications, functions or duties of a registered pharmacy technician which to a  
15 substantial degree evidence her present or potential unfitness to perform the functions authorized  
16 by her registration in a manner consistent with the public health, safety, or welfare, as follows:

17 a. On or about December 15, 2009, after pleading *nolo contendere*, Respondent was  
18 convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a)  
19 [driving while having a suspended license], in the criminal proceedings entitled *The People of the*  
20 *State of California v. Mariam Andreasyan* (Super. Ct. Los Angeles County, 2008, No.  
21 8GN01473). The Court placed Respondent on probation for a period of 12 months, ordered her  
22 to perform 72 hours of community service, and fined her. The circumstances surrounding the  
23 conviction are that on or about March 4, 2008, a Glendale Police officer, conducted a routine  
24 traffic stop after running a records check on Respondent's vehicle. The officer was advised that  
25 Respondent had an outstanding warrant attached to the vehicle. Respondent admitted to the  
26 officer that she was driving with a suspended license. Respondent was subsequently convicted of  
27 violating Vehicle Code section 12500, subdivision (a) [driving while having a suspended license.]

28 b. On or about January 7, 2010, after pleading *guilty*, Respondent was convicted of one



1 misdemeanor count of violating Penal Code section 602, subdivision (k) [trespassing: injury to  
2 property], in the criminal proceedings entitled *The People of the State of California v. Mariam*  
3 *Andreasyan* (Super. Ct. Los Angeles County, 2007, No. 7PS04187). The Court placed  
4 Respondent on probation for a period of 2 years, and fined her. The circumstances surrounding  
5 the conviction are that on or about March 5, 2007 through May 24, 2007, Respondent while being  
6 employed as a Pharmacy Technician at Rite Aid, took money from Rite Aid without permission  
7 and authorization in the excess amount of \$5,000.00. Respondent made several refund  
8 transactions on record, during the three month period, without customers being present at the  
9 register, and was taking the cash of the refund amounts. On or about June 11, 2007, Respondent  
10 informed her supervisor that she wished to be terminated and would not be going back to Rite  
11 Aid. Respondent was subsequently convicted of violating Penal Code section 602, subdivision  
12 (k) [trespassing: injury to property].

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Acts Involving Moral Turpitude, Dishonesty, Corruption, Fraud, Deceit)**

15 11. Respondent is subject to disciplinary action under sections 4300, and 4301,  
16 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts  
17 involving moral turpitude, dishonesty, fraud, deceit and/or corruption when she was convicted of  
18 crimes violating Vehicle Code section 12500, subdivision (a) [driving while having a suspended  
19 license]; and Penal Code section 602, subdivision (k) [trespassing: injury to property] on or about  
20 December 15, 2009, and January 7, 2010. Complainant refers to, and by this reference  
21 incorporates, the allegations contained in paragraph 10, above, subparagraph (a), inclusive.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct/Violate Act)**

24 12. Respondent is subject to disciplinary action under sections 4300 and 4301,  
25 subdivision (o), on the grounds of unprofessional conduct, in that Respondent committed an act  
26 and was convicted of a crime that violated the pharmacy act. Complainant refers to, and by this  
27 reference incorporates, the allegations contained in paragraph 10, above, subparagraph (a),  
28 inclusive, as though set forth fully.

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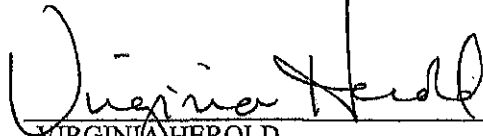
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 50143, issued to Mary Andreasyan;
2. Ordering Mary Andreasyan to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

2/22/12



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

LA2011501394