

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

In the Matter of:

Raul A. Gutierrez,  
aka Raul Arturo Salcido,  
aka Raul Gutierrez Salcido,

Petitioner.

OAH No. 2010100431

**DECISION**

On October 21, 2010, in La Jolla, California, a quorum of the Board of Pharmacy heard this matter. Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, presided.

Joshua A. Room, Deputy Attorney General, represented the People of the State of California.

Petitioner was present and represented himself.

The matter was submitted on October 21, 2010.

**FACTUAL FINDINGS**

1. On October 14, 1994, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 14159 to Raul Arturo Gutierrez, also known as Raul Arturo Salcido, also known as Raul Gutierrez Saucedo (Petitioner).

2. The Board filed Accusation Case No. 2170, dated July 30, 1999, against Petitioner.

Effective July 18, 2000, Petitioner's license was placed on two years probation based on untruthfulness on his application and five convictions substantially related to the qualifications, functions and duties of a pharmacist technician. The convictions occurred between 1991 and 1996; four were alcohol related, and one was for receiving stolen property

(a stolen vehicle). On August 15, 2002, Petitioner completed probation successfully, and his license was restored to full status

3. On August 28, 2006, the Board filed Accusation Case No. 2969 against Petitioner. Effective May 11, 2007, the Board revoked Petitioner's license and ordered him to pay the Board's costs of investigation and enforcement in the amount of \$6,380. The factual bases for the discipline were his June 14, 2005 conviction of possession of a controlled substance and conviction for driving under the influence of alcohol and his prior criminal history (Finding 2).

4. Business and Professions Code section 4309, subdivision (a)(1) requires that three years lapse before a petition for reinstatement of a revoked license may be filed. Business and Professions Code section 4309, subdivision (g) states that no petition shall be considered while petitioner is on court-ordered probation or parole. In this case, Petitioner became eligible to file a petition for reinstatement of his license on May 11, 2010; he had completed criminal probation by that date.

On July 17, 2010, Petitioner filed the Petition for Reinstatement (Petition), more than three years after the effective date of discipline of his license. His Petition included, among other things, (1) letters of recommendation from two Board licensees and two private citizens and (2) documentation of completion of more than 30 hours of Board-approved continuing education (CE) within the last two years.

The Petition is properly before the Board and satisfies the requirements of Business and Professions Code section 4309.

5. Among other things, Petitioner provided evidence of activities since the disciplinary action was taken, activities during the time his license was in good standing, rehabilitation efforts and his general reputation for truth and professional ability.

6. Born June 26, 1967, Petitioner is 43 years old and the father of two children. On August 31, 1986, when he was 19 years old, his mother and older brother were killed in the "Cerritos" airplane crash. After the death of his mother and brother, Petitioner's father returned to Mexico leaving Petitioner and his two older sisters in Southern California where they reared his 12-year-old sister. Petitioner's young age combined with the trauma of losing his mother and older brother and being left by his father led Petitioner to begin abusing alcohol. The majority of his convictions were related to the qualifications, functions and duties of a licensee and involved alcohol/alcohol abuse.

7. Since revocation of his license, Petitioner has worked "to become a better person." He recognizes that he made mistakes in his life that have impacted his community, his family and himself.

Petitioner admitted to being "habitually intemperate" in the use of alcohol but denied the same as to controlled substances. He testified that the conviction of possession of a

controlled substance (Finding 3) was an isolated incident. There is no evidence to the contrary.

Between 2005 and 2007, again, he completed the 18-month Drinking Driver Program, ordered by the Court in his criminal cases.

During the past five years, Petitioner has consumed but has not abused alcohol, has not driven after drinking alcohol and has not been convicted of driving under the influence. In support of his statement, he provided several drug-screening reports; the most recent reflected the results of an October 14, 2010, test. All tests came back negative. Petitioner identified changes he has made in his life, including his personal relationships, and described his commitment to maintaining his sobriety. He has "great" family support, is engaged to be married, has obtained joint custody of his son and works six days a week. He has maintained a clean driving record, with no convictions. By choice, Petitioner's lifestyle changes consume most, if not all, of his spare time in a positive manner.

8. Petitioner asserts that he is highly qualified to practice as a proficient and skilled pharmacy technician.

For more than eight years, Skilled Nursing Pharmacy has been Petitioner's employer, and Ali Sedghi (Sedghi) has been his manager. Sedghi submitted a letter in support of the petition. Since revocation of Petitioner's license in 2007, Petitioner has worked as a data entry manager for his employer. In his letter of support, among other things, Sedghi describes Petitioner as prompt, dependable, knowledgeable, quick to learn and able to work independently; his yearly evaluations have always been outstanding and he has achieved the yearly goals set for him.

Since July 2000 Petitioner has met all requirements to maintain a certification from the Pharmacy Technician Certification Board. His certification is current and is subject to renewal on July 31, 2012.

Petitioner completed 31 units of continuing education in April and May 2010.

9. Petitioner has not paid the costs of investigation and enforcement ordered by the Board in Case No. 2969 in the amount of \$6,380.

## LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4309, the Petition for Reinstatement of Pharmacy Technician License and supporting documents, the testimonial and documentary evidence have been considered. Given the foregoing and the facts (Findings 1, 2, 3, 4, 5, 6, 7 and 8), Petitioner established that it is not contrary to the public interest to reinstate his pharmacy technician license with probationary terms and conditions.

2. As ordered in Case No. 2969, Petitioner shall pay the costs of investigation and enforcement in the amount of \$6,380.

## ORDER

The Petition for Reinstatement of Raul Arturo Gutierrez is granted. If he satisfies all statutory and regulatory requirements for the issuance, his pharmacy technician license shall be reinstated. The pharmacy technician license shall be revoked immediately. The revocation is stayed. The pharmacy technician license of Raul Arturo Gutierrez is placed on probation for five years on the following terms and condition.

### 1. **Obey All Laws.**

Petitioner shall obey all State and Federal laws and regulations.

Petitioner shall report any of the following events to the Board, in writing, within 72 hours of such occurrence:

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

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

### 2. **Report to the Board.**

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

**3. Interview with the Board.**

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

**4. Cooperate with Board Staff.**

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

**5. Continuing Education.**

Petitioner shall provide evidence of efforts to maintain skill or knowledge as a pharmacy technician as directed by the Board or its designee.

**6. Notice to Employers.**

During the period of probation, Petitioner shall notify all present and prospective employers of the Decision in OAH Case No. 2010100431 and the terms and conditions imposed by the Decision, as follows:

- Within 30 days of this Decision and within 15 days of Petitioner undertaking new employment, he shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Petitioner's tenure of employment) and owner to report to the Board, in writing, acknowledging that the individual(s) has/have read the Decision in OAH No. 2010100431 and the terms and conditions imposed thereby. It shall be Petitioner's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.
- If Petitioner works for or is employed by or through a pharmacy employment service, Petitioner must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Decision in OAH No. 2010100431 in advance of Petitioner commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.
- Within 30 days of the effective date of this Decision, and within 15 days of Petitioner undertaking new employment by or through a pharmacy employment service, Petitioner shall cause his direct supervisor with the

pharmacy employment service to report to the Board, in writing, acknowledging that he/she has read the Decision in OAH No. 2010100431 and the terms and conditions imposed thereby. It shall be Petitioner's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

**7. Work Site Monitor.**

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

**8. Notification of Departure.**

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

**9. Reimbursement of Board Costs.**

As a condition precedent to successful completion of probation, Petitioner shall pay the Board's costs of investigation and prosecution in the amount of \$6,380. No later than 30 days from the date of this Decision, Petitioner shall commence making equal monthly

payments of the foregoing. There shall be no deviation from this schedule without prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Petitioner shall not relieve his obligation to reimburse the Board's costs of investigation and prosecution.

**10. Probation Monitoring Costs.**

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

**11. Abstain from Drugs and Alcohol.**

Petitioner shall abstain from the possession or use of alcohol, controlled substances, dangerous drugs and associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of documented medical treatment of Petitioner. Upon request of the Board or its designee, Petitioner shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of Petitioner's treatment. Failure to provide such documentation in a timely manner shall be considered a violation of probation. Any possession or use of alcohol, controlled substances or associated paraphernalia not supported by the documentation provided in a timely manner shall be considered a violation of probation.

**12. Attend Substance Abuse and Relapse Prevention and Support Groups.**

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

**13. Random Drug Screening.**

At his expense, Petitioner shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Petitioner may be required to participate in testing for the entire probationary period. The Board or its designee shall determine frequency of testing. Petitioner shall cooperate fully with the Board or its

designee. When directed by the Board or its designee, Petitioner shall submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, Petitioner shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of Petitioner's treatment. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by Petitioner as a pharmacy technician. Petitioner shall not resume work as a pharmacy technician until notified by the Board in writing.

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

Petitioner shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, Petitioner may continue to own or hold an interest in any licensed premises in which he holds an interest on the date of this Decision.

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

#### **14. Status of License.**

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

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

#### **15. Surrender While License is on Probation/Suspension.**

Following the effective date of this Decision, should Petitioner cease work due to retirement or health or otherwise be unable to satisfy the terms and conditions of probation, Petitioner may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or to take



other appropriate and reasonable action. Upon acceptance of the surrender of his license, Petitioner will no longer be subject to the terms and conditions of probation. The surrender of his license will constitute a record of discipline and shall become a part of the Petitioner's history of his license with the Board.

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

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

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

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

**17. Tolling of Probation.**

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

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

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

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

month during which Petitioner works as a pharmacy technician for a minimum of 80 hours as a pharmacy technician (as defined by Business and Professions Code section 4115).

**18. Violation of Probation.**

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

**19. Completion of Probation.**

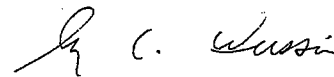
Upon written notice by the Board indicating successful completion of probation, Petitioner's pharmacy technician license shall be fully restored.

DATED: January 19, 2011

EFFECTIVE DATE: February 18, 2011

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STANLEY C. WEISSER  
Board President