

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

In the Matter of the Accusation Against:

**RICHARD ANDREW ALAMILLO**  
5761 Pioneer Blvd.  
Whittier, CA 90606

Pharmacy Technician License TCH 68135

Respondent.

Case No. 4104

OAH No. 2012060996

**DECISION**

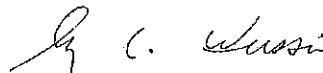
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), second paragraph of Factual Findings appearing on page 1 of the Proposed Decision, is hereby modified for technical reasons as follows:

On May 11, 2006, the Board issued Pharmacy Technician Registration No. TCH 68135 to respondent. Said license is in full force and effect and will expire on January 31, 2014, unless renewed.

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on June 10, 2013.

IT IS SO ORDERED this 10<sup>th</sup> day of May, 2013.

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:

Case No. 4104

Richard Andrew Alamillo  
Pharmacy Technician Registration  
No. TCH 68135,

OAH No. 2012060996

Respondent.

**PROPOSED DECISION**

Glynda B. Gomez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on December 5 and 6, 2012, in Los Angeles, California.

Supervising Deputy Attorney General Gloria Barrios represented Complainant. Respondent Richard Andrew Alamillo (Respondent) was present and represented himself.

Evidence was received and argument heard on December 5 and 6, 2012. The record was left open until December 13, 2012, for Respondent to submit documentation of his internship experience. The document was received without objection and marked and admitted as exhibit D. The matter was submitted on December 13, 2012.

**FACTUAL FINDINGS**

1. Virginia Herold made and filed the Accusation and First Amended Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California on May 29, 2012. At the beginning of the hearing, Complaint requested, and was granted, dismissal of the third cause for discipline, "Illegal Possession of a Controlled Substance."

2. On May 11, 2006, the Board issued Pharmacy Technician Registration No. TCH 71595 to respondent. Said license is in full force and effect and will expire on January 31, 2014, unless renewed.

3. On April 1, 2009, in the Superior Court of California, County of Los Angeles in Case No. 9WW01470, entitled the *People of the State of California v. Richard Andrew Alamillo*, Respondent was convicted on his plea of nolo contendere to one count of violating Vehicle Code section 23152, subdivision (b), driving with a blood alcohol content of 0.08 or higher (DUI) and one count of violating Vehicle Code section 12500, subdivision (a), driving without a valid driver's license, misdemeanors (2009 Convictions). Respondent was sentenced to three years summary probation, and ordered to complete a three month first offender alcohol and drug treatment program and payment of \$1,819 in assessments, fines, and fees. The facts and circumstances of the offense were that on February 2, 2009, Respondent was found driving on city streets in Whittier, California without a valid driver's license with a blood alcohol level of more than .08 percent.<sup>1</sup>

4. Pharmacy technicians perform their duties with a minimum amount of supervision, have access to controlled substances, provide patient information, customer service and assist in drug compounding and assembling prescriptions. Pharmacy technicians have substantial access to pharmacy inventory and good judgment is essential to the functions, duties and qualifications of a pharmacy technician. Respondent's decision to drive while under the influence of alcohol demonstrates bad judgment by putting himself and others in danger.

5. Complainant submitted a certification of costs of prosecution in the amount of \$2,150. The costs of prosecution include 5.25 hours of attorney time charged at \$170 per hour and 12.25 hours of paralegal time at \$120 per hour. The costs of prosecution are reasonable within the meaning of Business and Professions Code Section 125.3.

#### *Rehabilitation/Mitigation/Aggravation*

6. Respondent completed all court ordered classes and probation. Respondent testified that although he still has an occasional alcoholic beverage, he does not drink alcohol and drive. Respondent has not worked as a pharmacy technician, but has completed several pharmacy technician internships. Respondent has not tried to obtain a pharmacy technician position recently because he has been busy caring for his aunt, who recently suffered a stroke, and her young children. He expects to look for a position as a pharmacy technician when his family situation stabilizes.

7. The Board issued Respondent a Pharmacy Technician License on May 11, 2006, with knowledge that Respondent had been convicted in 2002 and 2005 of violating Vehicle Code section 23222, subdivision (b), driving a vehicle while possessing less than 28.5 grams of marijuana, a misdemeanor. Respondent testified that at the time of the 2002 and 2005 convictions, he was a volunteer delivery driver for a medical marijuana dispensary and was not using marijuana himself.

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<sup>1</sup> The evidence did not establish that Respondent's blood alcohol level was .12 percent as alleged in the pleading.

8. Respondent now has a prescription for medical marijuana for pain relief. Respondent suffered severe injuries to his arm, neck and back when mauled by a neighbor's Akita dog in 2007, and uses marijuana for pain relief under the direction of a physician.

### LEGAL CONCLUSIONS

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

2. Business and Professions Code section 490 provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Business and Professions Code section 492 provides, in pertinent part, that notwithstanding any other provision of law, successful completion of an alcohol and drug abuse assessment program shall not prohibit any agency established under Division 2 (Healing Arts) from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

4. Business and Professions Code section 4060 provides, in pertinent part, that no Board licensee shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor, or furnished pursuant to a drug order issued by a certified nurse-midwife, a physician assistant or a naturopathic doctor.

5. "Marijuana" is a Schedule I controlled substance as defined in Health and Safety Code section 11054, subdivision (d)(1), and is categorized as a dangerous drug pursuant to Health and Safety code section 4022.

6. Business and Professions Code section 4300 provides, in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.

7. Business and Professions Code section 4301 provides, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct.

8. Business and Professions Code section 4301, subdivision (h), provides, in pertinent part, that the administration 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 or to any other person 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, is unprofessional conduct.

9. Business and Professions Code section 4301, subdivision (l), provides that the conviction of a crime substantially related to the qualifications, functions and duties of a Board licensee is unprofessional conduct. The record of a conviction involving controlled substances or of a violation of the statutes of this state regulating controlled substances or a dangerous drug shall be conclusive evidence of unprofessional conduct.

10. Business and Professions Code section 4301, subdivision (o), provides that 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 constitutes unprofessional conduct.

11. California Code of Regulations, title 16, section 1770, provides that a crime or act shall be considered substantially related to the qualifications, functions or duties of a Board licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant consistent with the public health, safety, or welfare.

12. Cause exists to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (l), and section 490, in conjunction with California Code of Regulations, title 16, section 1770, for his conviction of a crime substantially related to the qualifications, functions and duties of a licensed pharmacy technician by reason of factual findings 3 and 4.

13. Cause exist to discipline respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (h), for unprofessional conduct by reason of factual findings 3 and 4.

14. The Board has the responsibility to protect the public. As set forth in California Code of Regulations, title 16 , section 1760, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case. These guidelines provide as follows:

- (1) Actual or potential harm to the public Actual or potential harm to any consumer
- (2) Prior disciplinary record, including level of compliance with disciplinary order(s)

- (3) Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
- (4) Number and/or variety of current violations
- (5) Nature and severity of the act(s), offense(s) or crime(s) under consideration
- (6) Aggravating evidence
- (7) Mitigating evidence
- (8) Rehabilitation evidence
- (9) Compliance with terms of any criminal sentence, parole, or
- (10) Overall criminal record
- (11) If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
- (12) Time passed since the act(s) or offense(s)
- (13) 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
- (14) Financial benefit to the respondent from the conduct

15. Considering the above enumerated factors, Respondent did not commit actual harm to the public by reason of his driving without a valid driver's license and with a blood alcohol content greater than 0.08, but his conduct had the potential for serious harm to the public. Respondent has no prior disciplinary history, warnings or admonishments. The violations are a serious lapse in judgment and are related to the functions, qualifications and duties of a pharmacy technician. There were no mitigating factors. Respondent has completed his probation and has not had any new convictions.

16. In its guidelines, the Board has established four categories of misconduct for which license discipline may be imposed. Each category has a range of recommended discipline. A category I violation is for a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for DUI is considered a category III offense because it involved

misuse of alcohol and presented a serious potential for harm and a lapse in judgment. In consideration of all of the facts and circumstances of this case, the interests of public protection will be achieved by placing Respondent's pharmacy technician registration on probation for two years.

17. Complainant has established that the Board has incurred reasonable costs of \$2,150 in this matter under the provisions of Business and Professions Code section 123.5, by reason of Finding 5. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court rejected a constitutional challenge to a cost recovery provision similar to Business and Professions Code section 125.3. In so doing, however, the Court directed the administrative law judge and the agency to evaluate several factors to ensure that the cost recovery provision did not deter individuals from exercising their right to a hearing. Thus, the Board must not assess the full costs where it would unfairly penalize a Respondent who has committed some misconduct, but who has used the hearing process to obtain the dismissal of some charges or a reduction in the severity of the penalty. The Board must consider a Respondent's subjective good faith belief in the merits of his or her position and whether that Respondent has raised a colorable challenge. The Board must also consider a Respondent's ability to pay. (*Zuckerman, supra*, at page 45.) In light of these factors, it would be unduly punitive to require Respondent to pay the entire balance of the Board's costs. Based upon Complainant's dismissal of one third of the charges and Respondent's unemployment, a reduction in the costs bill is appropriate. It is reasonable to expect, based upon his financial circumstances and employment, that Respondent could pay \$1,200 in costs over the two year term of probation. (Factual Findings 5 and 6).

18. The Board is entitled to recover from Respondent the sum of \$1,200 for its costs of in investigation and prosecution of this matter, by reason of factual finding 5 and legal conclusion 17.

### **ORDER**

Pharmacy technician registration No. TCH 68135 issued to respondent Richard Andrew Alamillo is revoked; however the revocation is stayed and respondent is placed on probation for two years upon the following terms and conditions:

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

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

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled

substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

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

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

## 2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

## 3. Report to the Board

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



#### 4. Interview with the Board

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

#### 5. Cooperate with Board Staff

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

#### 6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in OAH case number 2012060996 (agency case number 4104) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number OAH case number 2012060996 (agency case number 4104) and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number OAH case number 2012060996 (agency case number 4104) in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in OAH case number 2012060996 (agency case number 4104) and the terms and conditions imposed thereby. It shall be respondent'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.

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

#### 7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,200. Respondent shall make said payments as follows: \$50 per month. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

#### 8. Probation Monitoring Costs

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

#### 9. Status of License

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

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

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

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

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

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

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

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

#### 12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 10 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 10 hours per calendar month in California, respondent must

notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 10 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 10 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

### 13. Violation of Probation

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

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

### 14. Completion of Probation

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

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

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or

its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

#### 16. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

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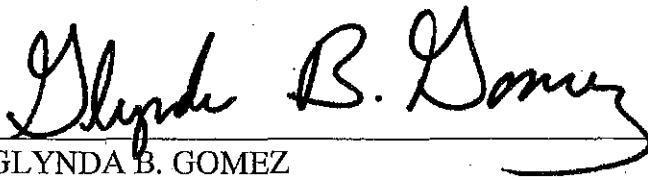
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17. Abstain from Drugs and Alcohol Use

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

DATED: March 20, 2013

  
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GLYNDA B. GOMEZ  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
4 State Bar No. 94811  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2540  
6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4104

12 **RICHARD ANDREW ALAMILLO**  
13 5761 Pioneer Blvd  
Whittier, CA 90606

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

14 Pharmacy Technician Registration  
15 No. TCH 68135

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 11, 2006, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 68135 to Richard Andrew Alamillo (Respondent). The  
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
24 brought herein, expired on January 31, 2014, and has not been renewed.

25 **JURISDICTION**

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

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STATUTORY PROVISIONS

1  
2       4.     Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license  
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period  
4 within which the license may be renewed, restored, reissued or reinstated.

5       5.     Section 490 states, in pertinent part:

6       “(a) In addition to any other action that a board is permitted to take against a licensee, a  
7 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
8 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
9 or profession for which the license was issued.

10       “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
11 discipline a licensee for conviction a crime that is independent of the authority granted under  
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
13 of the business or profession for which the licensee’s license was issued.

14       “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
15 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
16 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
17 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
18 made suspending the imposition of sentence, irrespective of a subsequent order under the  
19 provisions of Section 1203.4 of the Penal Code.”

20       6.     Section 4060 states, in pertinent part:

21       “No person shall possess any controlled substance, except that furnished to a person upon  
22 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
23 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
24 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
25 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
26 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the  
27 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,

28     ///



1 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-  
2 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled  
3 with the name and address of the supplier or producer.”

4 7. Section 4300 provides, in pertinent part, that every license issued by the Board is  
5 subject to discipline, including suspension or revocation.

6 8. Section 4301 states, in pertinent part:

7 “The Board shall take action against any holder of a license who is guilty of unprofessional  
8 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
9 Unprofessional conduct shall include, but is not limited to, any of the following:

10 . . . .

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

16 . . . .

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

19 . . . .

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
23 substances or of a violation of the statutes of this state regulating controlled substances or  
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
26 The board may inquire into the circumstances surrounding the commission of the crime, in order  
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
3 of this provision. The board may take action when the time for appeal has elapsed, or the  
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
8 indictment.

9 . . . .

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

14 **REGULATORY PROVISIONS**

15 9. California Code of Regulations, title 16, section 1770 states, in pertinent part;

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

22 **COST RECOVERY**

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

27 ///

28 ///

1           11.    **CONTROLLED SUBSTANCE**

2           “Marijuana,” is a Schedule I controlled substance as designated by Health and Safety Code  
3 section 11054, subdivision (d)(13) and is categorized as a dangerous drug pursuant to section  
4 4022.

5   **FIRST CAUSE FOR DISCIPLINE**

6   **(Convictions of Substantially Related Crimes)**

7           12.    Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
8 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
9 Respondent has been convicted of crimes substantially related to the qualifications, functions, or  
10 duties of a pharmacy technician. On or about April 1, 2009, after pleading nolo contendere,  
11 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152,  
12 subdivision (b) [driving while having 0.08% and more, by weight, of alcohol in his blood] and  
13 one misdemeanor count of Vehicle Code section 12500, subdivision (a) [driving without a valid  
14 driver’s license] in the criminal proceeding entitled *The People of the State of California v.*  
15 *Richard Andrew Alamillo* (Super. Ct. Los Angeles County, 2009, No. 9WW01470). The Court  
16 placed Respondent on 36 month of probation, with terms and conditions. The circumstances  
17 surrounding the conviction are that on or about February 2, 2009, Respondent drove a vehicle  
18 while having 0.12% of alcohol in his blood. While speaking to Respondent, the Whittier Police  
19 Department Officer detected an odor of an alcoholic beverage emitting from his person. He was  
20 observed to have bloodshot watery eyes. When asked if he had been drinking, Respondent  
21 admitted that he had been drinking beer earlier that day. When asked how many beers he drank,  
22 Respondent admitted that he drank 2 beers.

23   **SECOND CAUSE FOR DISCIPLINE**

24   **(Dangerous Use of Alcohol)**

25           13.    Respondent is subject to disciplinary action under sections 4301, subdivision (h), in  
26 that on or about February 2, 2009, Respondent used alcoholic beverages to an extent or in a  
27 manner dangerous or injurious to himself, another person, or the public, when he operated a  
28 vehicle while having 0.12% of alcohol in his blood. Complainant refers to, and by this reference

1 incorporates, the allegations set forth above in paragraph 12, subparagraph (b), as though set forth  
2 fully.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Illegal Possession of a Controlled Substance)**

5 14. Respondent is subject to disciplinary action under sections 4301, subdivisions (j) and  
6 (o), for violating section 4060, in that Respondent was found to be in illegal possession of a  
7 controlled substance, as follows:

8 a. On or about April 10, 2010, during a traffic stop by the Downey Police Department,  
9 Respondent was found to be in illegal possession of a controlled substance, to wit: Marijuana. He  
10 was cited for violating Vehicle Code section 23222, subdivision (b) [driving a vehicle while  
11 possessing less than 28.5 grams of marijuana].

12 b. On or about September 13, 2009, during a traffic stop by the Los Angeles County  
13 Sheriff's Department, Respondent was contacted. While speaking to Respondent, the officer  
14 detected an odor of fresh Marijuana emitting from the vehicle. When asked if there was anything  
15 illegal inside the vehicle, Respondent stated, "No. Well, I might in my center console." A search  
16 of Respondent's vehicle revealed a green plastic M & M container, containing a green leafy  
17 substance resembling Marijuana. He was cited for violating Health and Safety Code section  
18 11357, subdivision (b) [possessing less than 28.5 grams of marijuana].

19 **DISCIPLINE CONSIDERATIONS**

20 15. To determine the degree of discipline, if any, to be imposed on Respondent,  
21 Complainant alleges the following:

22 a. On or about January 25, 2005, after pleading nolo contendere, Respondent was  
23 convicted of one misdemeanor count of violating Vehicle Code section 23222, subdivision (b)  
24 [driving a vehicle while possessing less than 28.5 grams of marijuana] in the criminal proceeding  
25 entitled *The People of the State of California v. Richard Andrew Alamillo* (Super. Ct. Los  
26 Angeles County, 2005, No. 5WH00108) The Court ordered Respondent to pay fines and  
27 restitution. The circumstances surrounding the conviction are that on or about

28 ///

1 November 28, 2004, Respondent was found to be driving a vehicle while in possession of less  
2 than 28.5 grams of Marijuana.

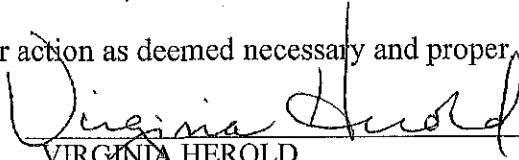
3 b. On or about April 8, 2002, after pleading nolo contendere, Respondent was convicted  
4 of one misdemeanor count of violating Health and Safety Code section 11357, subdivision (b)  
5 [possessing less than 28.5 grams of marijuana] in the criminal proceeding entitled *The People of*  
6 *the State of California v. Richard Andrew Alamillo* (Super. Ct. Los Angeles County, 2002, No.  
7 2DW01496) The Court placed Respondent on 12 months probation, with terms and conditions.  
8 The circumstances surrounding the conviction are that on or about March 3, 2002, Respondent  
9 was found to be in possession of less than 28.5 grams of Marijuana.

10 **PRAYER**

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

- 13 1. Revoking or suspending Pharmacy Technician Registration No. TCH 68135, issued  
14 to Respondent;
- 15 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
16 enforcement of this case, pursuant to section 125.3; and
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 5/29/12

  
19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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