



**California State Board of Pharmacy**  
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
 DEPARTMENT OF CONSUMER AFFAIRS  
 GOVERNOR EDMUND S. BROWN JR.

RECEIVED  
 BOARD OF PHARMACY  
 2014 JAN -6 AM 9:36

**APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE**

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Rosa G. Zaia</u>	Case No. <u>AC 4359</u>
Address of Record: <u>41595 Deanna Ranch Rd</u> <u>Murrieta, CA 92562</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4359, I hereby request to surrender my pharmacy technician license, License No. TCH 38750 Recid# 1607015A. 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Rosa Zaia  
 Applicant's Signature

1/2/14  
 Date

[Signature]  
 Executive Officer's Approval

1/13/14  
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900; 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the First Amended Accusation  
Against:

**ROSA G. ZAIA**  
41595 Deanna Ranch Road  
Murietta, CA 92362

Pharmacy Technician Registration No.  
TCH 38750

Respondent.

Case No. 4359

OAH 2012110131

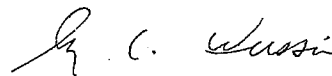
**DECISION AND ORDER**

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 December 20, 2013.

It is so ORDERED on November 20, 2013.

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 First Amended Accusation  
Against:

ROSA G. ZAIA

Pharmacy Technician Registration No. TCH 38750

Respondent.

Case No. 4359

OAH No. 2012110131

**PROPOSED DECISION**

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 12, 2013, in San Diego, California.

Marichelle S. Tahimic, Deputy Attorney General, Department of Justice, represented complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California.

Respondent Rosa G. Zaia appeared on her own behalf and was present throughout the disciplinary proceeding.

On September 12, 2013, the matter was submitted.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On May 23, 2013, complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, signed the First Amended Accusation (Case No. 4359) in her official capacity.

The first amended accusation alleged that respondent Rosa G. Zaia, a registered pharmacy technician, was convicted on September 7, 2011, of driving under the influence of alcohol; that she was guilty of unprofessional conduct as a result of her use of alcohol in a

manner that was dangerous to herself or others; that she had sustained more than one misdemeanor conviction involving the use of alcohol; and that she had received a letter of admonition issued by the Board in February 2010 related to an October 4, 2007, driving under the influence conviction. The first amended accusation and other jurisdictional documents were served on Ms. Zaia, who previously filed a notice of defense.

On September 12, 2013, the record in the administrative proceeding was opened; jurisdictional documents were presented; sworn testimony and documentary evidence were received; closing arguments were given; the record was closed; and the matter was submitted.

#### *The Pharmacy Technician Registration*

2. No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician (Bus. & Prof. Code, § 4202, subd. (e).) An applicant for a pharmacy technician registration must establish that he or she either (1) holds an associate of arts degree in pharmacy technology, or (2) has completed a specified course of training, or (3) has graduated from an approved or recognized school of pharmacy, or (4) has been certified by the Pharmacy Technician Certification Board (PTCB). (Bus. & Prof. Code, § 4202.) No examination is required to obtain a pharmacy technician registration, although an examination is required to obtain certification from the PTCB.

#### *Duties of a Pharmacy Technician*

3. A "pharmacy technician" assists a pharmacist in the performance of pharmacy related duties. (Bus. & Prof. Code, § 4938.) Under the direct supervision and control of a pharmacist, a pharmacy technician is authorized to perform packaging, manipulative, repetitive and other non-discretionary tasks related to the processing of prescriptions in a licensed pharmacy. (Bus. & Prof. Code, § 4115; Cal. Admin. Code, tit. 16, § 1793.)

#### *Respondent's Employment and License History*

4. In 1991, when she was 17 years old, Ms. Zaia began working in a pharmacy in Las Vegas, Nevada. She thereafter became licensed in Nevada as a pharmacy technician and provided pharmacy technician services at Sav-On Drugs, Sunrise Hospital, Desert Springs Hospital and Summerland Hospital.

Around 2000, Ms. Zaia married and moved to California.

5. On August 28, 2010, the Board of Pharmacy, State of California, issued Pharmacy Technician Registration No. TCH 38750 to Ms. Zaia. That registration expires on January 31, 2015, unless suspended or revoked.

6. Ms. Zaia briefly worked as a pharmacy technician at the Corona Regional Medical Center following her licensure. Ms. Zaia terminated her employment to become a stay at home mother.

7. On February 4, 2010, the Board issued a Letter of Admonishment to Ms. Zaia. That letter advised that the Board had completed an investigation and had determined that Ms. Zaia was guilty of unprofessional conduct related to an October 4, 2007, driving under the influence conviction that arose out of an incident occurring on May 13, 2007. The letter of admonition was issued pursuant to Business and Professions Code section 4315.<sup>1</sup> Ms. Zaia did not request an office conference and the letter did not contain a plan of correction.

There is no other history of administrative discipline.

#### *The October 4, 2007, Conviction*

8. On October 4, 2007, Ms. Zaia was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), a misdemeanor, in the Superior Court of California, County of Orange, Harbor Judicial Center, Laguna Nigel Facility, in Case No. 075M02118.

At the time of sentencing, the Superior Court advised Ms. Zaia that being under the influence of alcohol impairs an individual's ability to safely operate a motor vehicle and that it involves extremely dangerous conduct. The Superior Court suspended imposition of sentence and placed Ms. Zaia on three years informal probation. Terms and conditions of probation included requirements that Ms. Zaia pay fines and fees in the approximate amount of \$600, not drive a motor vehicle with a measurable amount of alcohol in her blood, attend and complete a six month first offender alcohol program, attend a MADD impact panel, complete 10 days of community service, and obey all laws.

Ms. Zaia successfully completed probation.

#### *Circumstances of the Offense*

9. Around 2:40 p.m. on May 18, 2007, an Orange County CHP officer observed two vehicles stopped on the right shoulder of southbound Interstate 5 near the San Juan Creek Road overpass. The CHP officer stopped to investigate and was told there was a collision that involved property damage only.

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<sup>1</sup> Business and Professions Code section 4315 authorizes the Board's executive officer or designee to issue a letter of admonishment to a licensee. The letter must be in writing and must inform the licensee of the right to either contest the letter or comply with it. The letter may contain a plan of correction. A licensee must maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

When the CHP officer spoke with Ms. Zaia, who was the operator of one of the vehicles, he smelled the odor of alcohol on her breath. Ms. Zaia said she consumed one "wine spritzer" at Bloomingdales earlier that day. The CHP officer observed that Ms. Zaia's eyes were red and watery and that her gait was unsteady. Ms. Zaia failed to successfully complete a field sobriety test and was arrested for driving under the influence.

Following her arrest, a blood sample was obtained from Ms. Zaia. Ms. Zaia's blood alcohol level was determined to be 0.20 percent.

#### *The September 7, 2011, Conviction*

10. On September 7, 2011, Ms. Zaia was convicted on her plea of guilty of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol) and subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), each a misdemeanor, in the Superior Court of California, County of Riverside, in Case No. RIM10016185.

The Superior Court suspended imposition of sentence and placed Ms. Zaia on 48 months informal probation. Terms and conditions of probation required Ms. Zaia to serve 40 days in custody in a work release program, pay fines and fees in the approximate amount of \$2,400, not consume alcoholic beverages, not frequent places where alcohol was the main item of sale, not drive a motor vehicle with a measurable amount of alcohol in her blood, attend and complete an SB 38 multiple offender drinking driver program, submit to testing for the use of alcohol at any time, and obey all laws.

Ms. Zaia remains on probation. She has satisfied all conditions of probation other than the completion of the full 48 months of probation. If there are no violations of probation, Ms. Zaia will complete probation on September 6, 2015.

#### *Circumstances of the Offense*

11. Around 7:10 p.m. on November 11, 2010, a Riverside County CHP officer responded to a call concerning a solo accident that he received about an hour earlier. When the CHP officer arrived at the scene, he observed that the vehicle involved in the accident was parked on the right side of a dirt road in a very remote area of Riverside County. Its right front tire was flat and the side airbags were deployed. No other property damage was documented in the arrest report.

The CHP officer encountered Ms. Zaia in the passenger seat of a mobile repair vehicle that had responded to the scene. Ms. Zaia had difficulty exiting the repair vehicle and staggered from that vehicle to the CHP patrol vehicle. The CHP officer smelled the odor of alcohol on Ms. Zaia's breath. He concluded that Ms. Zaia was extremely intoxicated. He did not require Ms. Zaia to attempt a field sobriety test for that reason.

Ms. Zaia admitted that she had been driving, but the arrest report contained no details related to that statement. In this hearing, Ms. Zaia disputed that part of the CHP report that stated she admitted that she consumed vodka earlier that day (she testified she had consumed tequila) and that part of the report that stated she admitted she had consumed alcohol at a friend's house (she testified she had consumed tequila in her truck after it came to a stop as a result of a striking a rock and flattening a tire). She disputed that part of the arrest report that indicated that she had not consumed alcohol since the accident happened. In the hearing, she testified that she consumed alcohol *after* her truck came to a stop and before the CHP officer arrived. It is without dispute that the CHP officer arrested Ms. Zaia for driving under the influence and that she pled guilty to that offense.

Ms. Zaia was transported to the Riverside Community Hospital where she was taken to the x-ray room, medical services were provided, and blood was drawn. Ms. Zaia's blood alcohol level was determined to be 0.19 percent.

#### *Ms. Zaia's Testimony*

12. Ms. Zaia was born in Mexico in January 1974. She moved to the United States in 1976. She grew up in Texas and Nevada. She graduated from Rancho High School in Las Vegas.

Ms. Zaia began working in pharmacies while she was still in high school. After high school, she attended the University of Nevada, Las Vegas, where she majored in Biology; she was forced to withdraw from college as a result of a lack of funds; she did not obtain a college degree. She worked part-time in pharmacies while she was attending UNLV.

Ms. Zaia became licensed as a pharmacy technician in Nevada. She worked in several hospital pharmacies. She married when she was 26 years old. She and her husband, who works in the biomedical field, moved to California following their marriage.

Ms. Zaia became licensed as a pharmacy technician in California and worked briefly at a hospital. She had children and terminated her employment. She has been a stay at home mother for the past 12 years. Ms. Zaia has three children, an 11-year old daughter, a nine-year old son, and an eight-year old son. Ms. Zaia's nine year old son has a diagnosis of autism<sup>2</sup>, does not speak, cannot engage in any activities of daily living, and experiences seizures. He is an Inland Regional Center client and a special education student who requires a variety of services and supports.

13. Ms. Zaia testified she did not consume alcoholic beverages until she was 33 years old. She began consuming alcohol in 2005, after her son was diagnosed with autism. Although her son experienced some developmental delays before the age of three and had a vocabulary of more than one hundred words, her son lost his speech without warning, began

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<sup>2</sup> Autism is a disorder characterized by impaired social interaction, limited verbal and non-verbal communication, if any, and by restricted, repetitive or stereotyped behaviors.

engaging in repetitive behaviors, and stopped interacting with Ms. Zaia and others. According to Ms. Zaia, "It was like I was watching him die." At the time, Ms. Zaia's family lived on a five acre ranch miles from any town. Ms. Zaia she felt trapped and alone. She testified she began consuming alcohol to distract herself and ease the pain.

14. Ms. Zaia described the progression of her alcoholism – starting with a few glasses of wine each day, to a bottle of wine, to two bottles of wine. She drank when her husband was home and was available to watch the children. She said she knew her condition was getting worse, but she did not believe she was an alcoholic.

After her first driving under the influence conviction, Ms. Zaia stopped drinking altogether while she was on probation. She was required to attend a first offender drinking driver program and several AA meetings. She attended the program and meetings, but according to Ms. Zaia, "I just didn't get it. I wasn't like them."

Ms. Zaia began consuming alcoholic beverages again almost immediately after she completed her first period of probation in October 2010. Within a very short period of time, Ms. Zaia was again consuming alcoholic beverages to excess. On November 4, 2010, she tried to stop drinking on her own. In her testimony, she admitted that she continued to "crave" alcohol and that she kept a pint of tequila in her purse for an emergency and in the event she could not function without a drink. On November 11, 2010, she visited her father, a United States Air Force veteran, at his home in a remote area of Riverside County. On her way home from that visit, she ran over a rock that flattened the tire of the truck she was driving. Her air bags deployed, which resulted in the OnStar unit in her vehicle contacting a repair service and the CHP. The mobile repair truck and CHP officer responded to Ms. Zaia's situation.

Ms. Zaia testified that she did not consume alcoholic beverages while she was visiting her father or before her vehicle became disabled. She testified that she began consuming tequila while she was sitting in her car waiting for the mobile repair vehicle to arrive, and that she became intoxicated in the process. She was arrested for driving under the influence; she testified she later pled guilty to that offense even though she had not been driving while intoxicated.<sup>3</sup>

Ms. Zaia's testimony about the genesis and development of her alcoholism, her increasing inability to control her consumption of alcohol, and the circumstances surrounding the incident occurring on November 11, 2010, was extremely credible. She testified that "It came as quite a surprise" to learn she was an alcoholic when she began formal treatment for alcoholism and learned that she did not drink like others. Ms. Zaia's testimony on these

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<sup>3</sup> Ms. Zaia's plea of guilty of violating Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol) and subdivision (b) (driving with a blood alcohol level of 0.08 percent or more), conclusively established the conviction, but her plea to those offenses did not preclude her from introducing evidence in explanation, mitigation and rehabilitation. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)



issues was significant because it established her progressive problem with alcohol, her denial of having a problem with alcohol, and her inability to resolve that problem on her own.

15. Ms. Zaia last consumed alcohol the evening of November 11, 2010.

On November 17, 2010, Ms. Zaia voluntarily entered Charter Oak Hospital in Pasadena where she remained an inpatient in the chemical dependency program for approximately one month. Ms. Zaia began participating in Alcoholics Anonymous. At Charter Oak, Ms. Zaia learned about the dangers of alcohol, came to understand the need to engage others in her recovery and not isolate, the need to verbalize her feelings, and the need to deal with her issues of guilt and shame. While she was at Charter Oak, Ms. Zaia met Stephanie, who became and remains her AA 12-step sponsor.

After Ms. Zaia was discharged from Charter Oak, she was required to participate in an aftercare program that involved attending 12-step meetings. She attended numerous AA meetings, read the Big Book, met with Stephanie once a week, and completed the 12-steps of recovery. She claims November 11, 2010, as her sobriety date.

Ms. Zaia continues to attend at least one AA meeting a week. Her AA home group is a Tuesday night women's candlelight meeting that meets in Murrieta. She continues to get together with Stephanie once a week. She has become active in her church. Her husband, who never had a problem with the excessive consumption of alcoholic beverages, quit drinking alcohol to support Ms. Zaia's sobriety and abstinence. Ms. Zaia and her husband meet with Dr. Bradley, a psychologist, once a month.

16. Ms. Zaia expressed great remorse concerning her abuse of alcohol, including the negative impact it had on her husband and children and the potential risk of injury she caused others while she driving and under the influence. According to Ms. Zaia, she has identified the negative consequences of drinking and has taken responsibility for her alcoholism by admitting her wrongdoing and remaining abstinent.

17. Ms. Zaia pled guilty to driving under the influence and driving with an excessive amount of alcohol in her system on September 7, 2011. Following her conviction, she served all the time that was required through the work release program, paid all fines and fees, has not consumed alcohol, has not frequented places where alcohols is the main item of sale, has not driven with any alcohol in her system, and completed an 18-month multiple offense drinking driver program. She has not been arrested for any other offense.

Ms. Zaia was required to have an alcohol interlock device installed in her vehicle. She maintained that device for the period required by law, and then voluntarily maintained the device in her vehicle for another eight months as a deterrent.

18. Ms. Zaia has become passionate about assisting parents of children with autism and autistic children. She formed a nonprofit corporation that purchases I-pads for

autistic children who attend Cole Canyon Elementary School in Murrieta. She is an active member of a parent autism support group and arranges speakers for group meetings.

19. Ms. Zaia appreciates the Board's concern about her criminal history and substance abuse issues. She recognizes that when she consumes any alcohol she is not fit to be a pharmacy technician.

20. Ms. Zaia agreed with counsel for complainant that her interest in autism and her effort to support parents of autistic children and victims of autism is a new calling she will be involved with for the remainder of her life. When asked why she wants to retain the pharmacy technician registration, Mr. Zaia said, "In case my husband passes." Ms. Zaia said she would take classes and pass any examination required to demonstrate her competence to maintain her registration, that she would undergo a suspension of her registration until she completed the required coursework and passed the examination, that she would submit to random testing for alcohol and drugs while on probation at her own expense, and that she would comply with all terms and conditions of probation if she were permitted to retain a probationary registration.

#### *Disciplinary Guidelines*

21. The board enacted comprehensive disciplinary guidelines. The board recognizes that individual cases may necessitate a departure from the guidelines; in such cases, the mitigating circumstances should be detailed, especially where a Category III violation is involved.

With regard to a pharmacy technician, the guidelines provide:

The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol

If revocation is not imposed, the board recommends a minimum Category III level of discipline be imposed on the pharmacy technician. This would include suspension and probation.

In addition, a pharmacy technician would be required to obtain certification as defined by Business and Professions Code section 4202(a)(4) prior to resuming work as a pharmacy technician. The board believes that certification prior to resuming work is always warranted in cases where a pharmacy technician license is disciplined but not revoked.

Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist. To place a pharmacy technician on probation places an additional burden on the pharmacist (who may or may not be on probation) to ensure that the respondent pharmacy technician complies with the terms and conditions of his or her probation.

The guidelines also state in part:

A minimum three-year probation period has been established . . . as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation. A suspension period may also be required as part of the probation order. The board prefers that any stayed order be for revocation rather than for some period of suspension.

Probation conditions are divided into two categories: (1) standard conditions that shall appear in all probation cases, and (2) optional conditions that depend on the nature and circumstances of a particular case. These conditions may vary depending on the nature of the offense(s).

The board may also impose any other condition appropriate to the case where the condition is not contrary to public policy.

The guidelines recommend the following factors be considered to determine the penalty to be imposed: actual or potential harm to the public; actual or potential harm to any

consumer; prior disciplinary record; prior warnings including letters of admonishment; number and variety of current violations; the nature and severity of the crimes under consideration; aggravating evidence; mitigating evidence; rehabilitation evidence; compliance with terms of any criminal sentence and probation; overall criminal record; evidence of proceedings to set aside and dismiss the criminal case; the time passed since the offenses; 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; and any financial benefit to the respondent. A respondent is permitted to present mitigating circumstances and has the burden of demonstrating any rehabilitative or corrective measures he or she has taken. Recent dated statements and letters should be provided to reflect a respondent's conduct and current situation.

### *The Appropriate Measure of Discipline*

22. Ms. Zaia is a 39-year-old recovering alcoholic who is the mother of three young children. She has been married for 15 years.

Ms. Zaia was convicted on two occasions of driving under the influence, once in October 2007 and once in September 2011. The blood alcohol levels obtained following Ms. Zaia's arrests were extremely high. Ms. Zaia was not employed as a registered pharmacy technician when she was an active alcoholic; for that reason, her disease did not result in actual or potential danger specific to pharmacy consumers; however, her active alcoholism posed a serious risk of injury to Ms. Zaia and others, particularly motorists sharing the roadways.

In August 2010, the Board issued a letter of admonishment that notified Ms. Zaia that driving under the influence of alcohol was a substantially related offense; despite that notice, and most likely because she had once again become powerless over alcohol, Ms. Zaia disregarded the import of that notice and drove under the influence within 90 days, probably more than once. To some extent, Ms. Zaia's disregard of the letter of admonishment and denial of her status as an alcoholic was an aggravating matter; to some extent, her denial was simply an element of her disease.

Ms. Zaia stopped consuming alcoholic beverages on November 11, 2010. Her testimony in that regard was credible, and she provided written proof that she completed all that was required of her on criminal probation including attending a multiple offender drinking driver program, paying all fines and fees, attending AA meetings, and participating in a drinking driver counseling program. She voluntarily entered and successfully completed the Charter Oak Hospital inpatient chemical dependency program. She continues to attend AA meetings and meets with an AA sponsor weekly. She does not use or possess dangerous drugs or controlled substances.

In her recovery and abstinence from the use of alcohol, Ms. Zaia has become heavily involved in an autism support community. She is of service to parents of children with autism and children who suffer from autism. Her life seems to be back on track.

23. The disciplinary recommendation set forth below is sufficient to protect the public. This disciplinary recommendation considers the strong evidence of rehabilitation presented by Ms. Zaia. The evidence of rehabilitation and the need for public protection are not in conflict, and an outright revocation of Ms. Zaia's registration is not required to protect the public.<sup>4</sup>

24. Probation shall be imposed for a period of five years. Terms and conditions of probation shall include a requirements that Ms. Zaia obtain certification before resuming work, that she obey all laws, report to the Board as required, notify all employers of her probationary status, reimburse the Board for its costs of enforcement, pay probation monitoring costs, abstain from the use of unauthorized drugs and alcohol, attend a substance abuse recovery and relapse prevention support group, and submit to random drug screening. Terms of probation shall also require that Ms. Zaia's registration be suspended for a year. During the period of suspension, Ms. Zaia shall obtain the education necessary to establish her current competency as a pharmacy technician and she shall take and pass the PTCB certification examination. If she does not pass the examination within the first year of probation, the order staying the revocation shall be dissolved and an outright revocation of the registration shall be imposed.

As a condition of probation, and after serving the period of suspension, probation shall require Ms. Zaia to be employed as a registered pharmacy technician for at least 20 hours per month. It is concluded that an individual who is on probation must work at least 20 hours a month to ensure a requisite level of monitoring and to ensure the experience and ongoing training necessary to protect the public. Whether Ms. Zaia wants to maintain this level of employment during the period she is on probation or whether she will surrender her registration because of personal conflicts that such a commitment requires is a decision that rests solely with Ms. Zaia. It is not the Board's decision.

#### *Costs of Investigation and Enforcement*

25. A declaration of the deputy attorney general who prosecuted this matter was submitted to support a claim of enforcement costs of approximately \$3,927.50. No objection

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<sup>4</sup> Business and Professions Code section 4313 provides:

In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

was made to the cost declaration or to its contents. The disciplinary matter took about a half day to try to conclusion. It raised interesting factual issues.

The deputy attorney general who prosecuted the matter was, as always, well prepared and professional.

Under all the circumstances, it would not be unjust to award the Board \$3,927.50 for its reasonable costs of enforcement.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The education and training required to hold a pharmacy technician registration are set forth in Factual Finding 2. The duties of a registered pharmacy technician are set forth in Factual Finding 3.

The Board's disciplinary guidelines observe that pharmacy technicians are issued a license based on minimal education, training requirements or certification, and that no examination is required for issuance of the registration. The Board's guidelines note that pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

2. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. The sharp distinction between professional licenses and nonprofessional licenses supports the distinction in the standards of proof. Because a professional license represents the fulfillment of extensive educational, training and testing requirements, a licensee has an extremely strong interest in retaining the license that he or she has expended so much effort to obtain. The same cannot be said for a licensee's interest in retaining a nonprofessional license even though an applicant for an occupational (as opposed to a professional) license is required complete certain coursework and pass an examination. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453-454.)

3. The phrase "preponderance of evidence" is usually defined in terms of probability of truth, e.g., "such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth" and "more likely true than not true." Otherwise stated, a preponderance calls for probability, while clear and convincing proof demands a high probability. (*Utility Consumers' Action Network v. Public Utilities Commission of the State of California* (2010) 187 Cal.App.4th 688, 698-699.)

4. The Board has the burden of proving the charging allegations by a preponderance of the evidence. The preponderance of the evidence standard applies in this

proceeding because a pharmacy technician registration is a nonprofessional/occupational license. However, the application of the preponderance of the evidence standard is not critical to the outcome in this matter because the same conclusions would be reached even if the clear and convincing evidence standard were applied.

*Applicable Disciplinary Statutes and Regulations*

5. Business and Professions Code section 490 provides in part:

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 . . . .

6. Business and Professions Code section 493 provides in part:

Notwithstanding any other provision of law, in a proceeding . . . to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that . . . the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question . . . .

7. Business and Professions Code section 4202, subdivision (d) provides:

The board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.

8. Business and Professions Code section 4301 provides in part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

[¶] . . . [¶]

(h) The . . . use . . . 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 public, or to the extent that the use impairs

the ability of the person to conduct with safety to the public the practice authorized by the license.

[¶] . . . [¶]

(k) The conviction of more than one misdemeanor . . . involving the use . . . of any . . . alcoholic beverage . . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction . . . of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct . . . .

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

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

*Use of the DUI Convictions – Substantial Relationship*

10. In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, a physician sustained two alcohol-related driving convictions. The physician's license was disciplined under Business and Professions Code section 2239 (which provided that two or more alcohol related convictions constituted unprofessional conduct). On appeal, the appellate court found a logical connection (i.e., a substantial relationship) between the alcohol-related convictions and the physician's fitness to practice medicine. The appellate court wrote:

Driving while under the influence of alcohol . . . shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society . . . Knowledge of such repeated conduct by a physician, and particularly of its propensity to endanger members of the public, tends to undermine public confidence in and respect for the medical profession . . . Repeated convictions involving alcohol use, two of which violated Griffiths' probation, reflect poorly on Griffiths' common sense and



professional judgment, which are essential to the practice of medicine, and tend to undermine public confidence in and respect for the medical profession.” *Id.*, at pp. 770-771.

The same reasoning applies with regard to Ms. Zaia’s two driving under the influence of alcohol convictions. The convictions, and each of them, are substantially related to the qualifications, functions and duties of a registered pharmacist technician.

*Rehabilitation*

11. California Code of Regulations, title 16, section 1769 provides in part:

[¶] . . . [¶]

(b) When considering the suspension or revocation of . . . 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.

12. Rehabilitation is a state of mind, and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.)

13. Remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented when an individual demonstrates by sustained conduct over an extended period of time that he is once again fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 991.)

14. When considering an individual's rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The requisite length of time required to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

15. Ms. Zaia fully acknowledged the wrongfulness of her past misconduct. She expressed remorse. She acknowledged that she is an alcoholic. She took immediate and effective steps following her second driving under the influence arrest to address her alcoholism. She has not consumed alcoholic beverages for nearly three years.

It is concluded that Ms. Zaia has shown meaningful and sustained rehabilitation, although she must continue in her recovery efforts to remain abstinent. She is certainly well into the process of rehabilitation.

#### *Cause Exists to Impose Administrative Discipline*

16. First Cause for Discipline: Cause exists to revoke Ms. Zaia's registration as a pharmacy technician under Business and Professions Code sections 490 and 4301, subdivision (l). A preponderance of the evidence established that on September 7, 2011, Ms. Zaia was convicted of driving under the influence and driving with an excessive blood alcohol level, convictions that are substantially related to the qualifications, functions and duties of a registered pharmacy technician.

17. Second Cause for Discipline: Cause exists to revoke Ms. Zaia's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (h). A preponderance of the evidence established that on November 11, 2010, Ms. Zaia engaged in unprofessional conduct in that she consumed an alcoholic beverage to the extent she was a danger to herself and others.

18. Third Cause for Discipline: Cause exists to revoke Ms. Zaia's registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (k). A preponderance of the evidence established that Ms. Zaia was convicted of driving under the influence of alcohol on October 4, 2007 and of driving under the influence of alcohol and driving with an excessive level of alcohol in her system on September 7, 2011.

#### *The Appropriate Measure of Discipline*

19. Cause exists to impose a Category III sanction that includes a revocation, stayed, with appropriate terms and conditions of probation is appropriate under all the circumstances, as outlined in Factual Finding 24. This measure of discipline is consistent with the Board's disciplinary guidelines.

*Recovery of Costs of Enforcement*

20. Business and Professions Code section 125.3 provides in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . . .

21. Cause exists under Business and Professions Code section 125.3 to direct Ms. Zaia to reimburse the Board its reasonable costs of enforcement in the amount of \$3,927.50.

**ORDER**

Pharmacy Technician Registration No. TCH 38750 issued to respondent Rosa G. Zaia is revoked; however, the revocation is stayed and respondent is placed on five years' probation on the following terms and conditions of probation.

**1. Suspension**

As part of probation, respondent shall be suspended from working as a pharmacy technician for a period of one year. The suspension shall commence on the effective date of this decision. During the period of suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained except as may be required to obtain certification as a registered pharmacy technician. 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 except as may be necessary to obtain certification as a registered pharmacy technician. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances except as may be necessary to obtain certification as a registered pharmacy technician. Respondent shall not direct, control or perform any aspect of the practice of pharmacy while she is on probation. Respondent shall not own or hold an interest in any licensed premises while she is on probation.

During the period of suspension, respondent shall obtain the education and training necessary to reestablish her competence and qualification for registration as a pharmacy technician by meeting any one of the following requirements: (1) obtain an associate's degree in pharmacy technology; complete a course of training specified by the board; (3) graduate from a school of pharmacy recognized by the board; or (4) pass an examination and becomes certified by the Pharmacy Technician Certification Board.

Respondent's failure to obtain certification or to otherwise comply with this order of suspension shall constitute a violation of probation and provides the Board with grounds to dissolve the order staying the order of revocation and impose an outright revocation respondent's registration.

## **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, whether state or federal;
- the filing of any action for discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's registration 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.

Respondent's failure to timely report any such occurrence constitutes 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 of delinquency in the 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 her 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 this Decision in Case Number 4359 and of all the terms, conditions and restrictions imposed on respondent by this 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 her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the Board Decision in Case Number 4359 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Board's Decision in Case Number 4359 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 her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the Board's Decision in Case Number 4359 and the terms and conditions imposed thereby. It

shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

"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 \$3,927.50 within the first year of probation. 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 as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of her 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 of suspension and during any period in which 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 her 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 her 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 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 20 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 20 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 20 hours per month 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 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

**13. No Ownership of Licensed Premises**

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

**14. 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, 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.

**15. Random Drug Screening**

Respondent, at her 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 shall be determined by the Board or its designee. Respondent shall fully cooperate with the Board or its designee at all times 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. Respondent's 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. Respondent's 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 respondent from employment as a registered pharmacy technician. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

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

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

#### **16. Work Site Monitor**

Within ten (10) days of her obtaining of any employment, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed.

Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

#### **17. Notification of Departure**

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the Board

verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

#### **18. 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 bona fide 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.

#### **19. Tolling of Suspension**

During the period of suspension, respondent shall not leave California for any period exceeding ten (10) days, regardless of purpose (including vacation). Any such absence in excess of ten (10) days during suspension shall be considered a violation of probation. Moreover, any absence from California during the period of suspension exceeding ten (10) days shall toll the suspension, i.e., the suspension shall be extended by one day for each day over ten (10) days respondent is absent from California. During any such period of tolling of suspension, respondent must nonetheless comply with all terms and conditions of probation.

Respondent must notify the Board in writing within ten (10) days of departure, and must further notify the Board in writing within ten (10) days of return. The failure to provide such notification(s) shall constitute a violation of probation. Upon such departure and return, respondent shall not return to work until notified by the Board that the period of suspension has been satisfactorily completed.

#### **20. 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.

**21. Completion of Probation**

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

DATED: October 14, 2013

  
\_\_\_\_\_  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings

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

13. In the Matter of the First Amended Accusation  
14. Against:

Case No. 4359

15. **ROSA G. ZAIA**  
16. 41595 Deanna Ranch Rd.  
17. Murietta, CA 92362

**FIRST AMENDED**  
**ACCUSATION**

18. **Pharmacy Technician Registration No.**  
19. **38750**

20. Respondent.

21. Complainant alleges:

22. **PARTIES**

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

26. 2. On or about August 28, 2001, the Board of Pharmacy issued Pharmacy Technician  
27. Registration Number 38750 to Rosa G. Zaia (Respondent). The Pharmacy Technician  
28. Registration was in full force and effect at all times relevant to the charges brought herein and  
will expire on January 31, 2015, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

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

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

11 (1) Suspending judgment.

12 (2) Placing him or her upon probation.

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

15 (4) Revoking his or her license.

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

18 ...

19 (e) The proceedings under this article shall be conducted in  
20 accordance with Chapter 5 (commencing with Section 11500) of  
21 Part 1 of Division 3 of the Government Code, and the board shall  
22 have all the powers granted therein. The action shall be final,  
23 except that the propriety of the action is subject to review by the  
24 superior court pursuant to Section 1094.5 of the Code of Civil  
25 Procedure.

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

29 **STATUTORY AND REGULATORY PROVISIONS**

30 6. Section 4301 of the Code states:

31 The board shall take action against any holder of a license who is  
32 guilty of unprofessional conduct or whose license has been  
33 procured by fraud or misrepresentation or issued by mistake.

Unprofessional conduct shall include, but is not limited to, any of the following:

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

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

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

7. Section 482 of the Code states:

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

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

(b) Considering suspension or revocation of a license under Section 490.

1 Each board shall take into account all competent evidence of  
2 rehabilitation furnished by the applicant or licensee.

3 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or  
4 revoke a license on the ground that the licensee has been convicted of a crime substantially  
5 related to the qualifications, functions, or duties of the business or profession for which the  
6 license was issued.

7 9. Section 493 of the Code states:

8 Notwithstanding any other provision of law, in a proceeding  
9 conducted by a board within the department pursuant to law to deny  
10 an application for a license or to suspend or revoke a license or  
11 otherwise take disciplinary action against a person who holds a  
12 license, upon the ground that the applicant or the licensee has been  
13 convicted of a crime substantially related to the qualifications,  
14 functions, and duties of the licensee in question, the record of  
15 conviction of the crime shall be conclusive evidence of the fact that  
16 the conviction occurred, but only of that fact, and the board may  
17 inquire into the circumstances surrounding the commission of the  
18 crime in order to fix the degree of discipline or to determine if the  
19 conviction is substantially related to the qualifications, functions,  
20 and duties of the licensee in question.

21 As used in this section, 'license' includes 'certificate,' 'permit,'  
22 'authority,' and 'registration.'

23 10. Title 16, California Code of Regulations, section 1769, states:

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

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

37 11. Title 16, California Code of Regulations, section 1770, states:

38 For the purpose of denial, suspension, or revocation of a personal or

1 facility license pursuant to Division 1.5 (commencing with Section  
2 475) of the Business and Professions Code, a crime or act shall be  
3 considered substantially related to the qualifications, functions or  
4 duties of a licensee or registrant if to a substantial degree it  
5 evidences present or potential unfitness of a licensee or registrant to

6 perform the functions authorized by his license or registration in a  
7 manner consistent with the public health, safety, or welfare.

8 **COST RECOVERY**

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 **(September 7, 2011 Conviction of DUI on November 11, 2010)**

15 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (I)  
16 for conviction of a crime substantially related to the qualifications, functions and duties of a  
17 Pharmacy Technician in that in *The People of the State of California v. Rosa Guadalupe Zaia*,  
18 Riverside Superior Court, Case No. RIM 10016185, Respondent was convicted on her guilty plea  
19 of driving under the influence of alcohol in violation of Vehicle Code section 23152(a) and  
20 driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of Vehicle  
21 Code section 23152(b) on September 7, 2011.

22 14. The circumstances are as follows. On November 11, 2010, an Officer from the  
23 Riverside CHP responded to a traffic collision at about 1811 hours. Upon arriving at the scene,  
24 the officer saw a blue pickup truck parked along the right side of the road with the front right tire  
25 flat and the curtain airbags deployed. The officer was unable to locate the driver of the truck near  
26 the vehicle. The officer was contacted by the driver of another vehicle who advised the officer  
27 that the driver of the pickup was the passenger in his vehicle. Respondent was identified as the  
28 driver of the pickup truck. Respondent was unable to exit from the vehicle without assistance.  
She lost her balance and almost fell three times as she walked to the patrol car. The officer had  
Respondent lean against the patrol car but she fell down again as she reached for her purse, which  
was on the hood of the patrol car. The officer noticed the odor of an alcoholic beverage on



1 Respondent and her breath. Respondent admitted to the officer that she had consumed alcoholic  
2 beverages. No Field Sobriety Tests were performed due to Respondent's inability to maintain her  
3 balance.

4 15. Respondent was transported to Riverside Community Hospital for medical clearance  
5 since she had been falling. A blood sample was obtained and tested, resulting in a B.A.C. of  
6 0.19%. It was later determined that Respondent's vehicle had not collided with anything and,  
7 according to Respondent, that the airbags deployed when she applied the brakes.

8 16. As a result of the conviction, Respondent was sentenced to 48 months summary  
9 probation, committed to the custody of the Riverside County Sheriff for 40 days to be served in  
10 the work release program, attend and complete a drinking driver program, and ordered to pay  
11 \$1,904.00 in fines and penalties and \$414.45 in fees.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Unprofessional Conduct – Use of Alcoholic Beverage on November 11, 2010)**

14 17. Respondent is subject to disciplinary action under Code section 4301, subdivision (h)  
15 for unprofessional conduct for the use of an alcoholic beverage on November 11, 2010 in a  
16 manner that was dangerous or injurious to herself or to the public, as more fully set forth in  
17 paragraphs 13-16 above and incorporated by this reference as though set forth in full herein.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Conviction of More than One Misdemeanor Involving Use of Alcoholic Beverage)**

20 18. Respondent is subject to disciplinary action under Code section 4301, subdivision (k)  
21 for unprofessional conduct in that Respondent sustained more than one misdemeanor conviction  
22 involving the use of an alcoholic beverage.

23 19. On September 7, 2011 in *The People of the State of California v. Rosa Guadalupe*  
24 *Zaia*, Riverside Superior Court, Case No. RIM 10016185, Respondent was convicted on her  
25 guilty plea of driving under the influence of alcohol in violation of Vehicle Code section 23152(a)  
26 and driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of  
27 Vehicle Code section 23152(b), a misdemeanor, as more fully set forth in paragraphs 13-16 above  
28 and incorporated by this reference as though set forth in full herein.

1 20. On October 4, 2007, in *The People of the State of California v. Rosa Guadalupe Zaia*,  
2 Orange County Superior Court, Harbor Justice Center, Case No. 07SM02118, Respondent was  
3 convicted on her guilty plea of driving under the influence of alcohol with a B.A.C. of 0.08% or  
4 greater in violation of Vehicle Code section 23152(b), a misdemeanor. As a result of the  
5 conviction, Respondent was sentenced to 3 years information probation, attend and complete a 6  
6 month Level 2 First Offender Alcohol Program, attend and complete a Mothers' Against Drunk  
7 Driving (MADD) Victim's Impact Panel or 2 AA meetings in lieu of the Impact Panel, complete  
8 10 days of community service, and payment of fines and fees in the amount of \$1,510.50.

9 21. The circumstances leading to the October 4, 2007 conviction are as follows. At about  
10 1440 hours on May 18, 2007, an officer of the Orange County CHP observed two vehicles  
11 stopped on the right shoulder of Interstate 5 during a routine patrol. The officer was advised that  
12 a collision had occurred. When the officer contacted Respondent, who was the driver of the  
13 Chevrolet pickup truck, the officer smelled the odor of an alcoholic beverage on Respondent's  
14 breath. Respondent admitted she drank one "spritzer" earlier at Bloomingdales. The officer  
15 noted that Respondent's eyes were red and watery and that Respondent's gait was unsteady.  
16 Respondent was not able to successfully complete the Field Sobriety Tests. Preliminary Alcohol  
17 Screening results were 0.215% at 1514 hours and 0.213% at 1516 hours. A blood sample was  
18 obtained and tested, which indicated a B.A.C. of 0.20%.

#### 19 **DISCIPLINE CONSIDERATIONS**

20 22. To determine the degree of discipline, if any, to be imposed on Respondent,  
21 Complainant alleges that on or about February 4, 2010, the Board of Pharmacy issued a Letter of  
22 Admonishment to Respondent in Case Number CI 2007 37037 for the October 4, 2007 conviction  
23 in *The People of the State of California v. Rosa Guadalupe Zaia*, Orange County Superior Court,  
24 Harbor Justice Center, Case No. 07SM02118, in which Respondent was convicted on her guilty  
25 plea of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of  
26 Vehicle Code section 23152(b).

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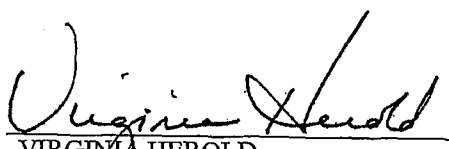
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number 38750, issued to Rosa G. Zaia;
2. Ordering Rosa G. Zaia to pay the Board of Pharmacy 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: 5/23/13



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

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