

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

In the Matter of the Accusation Against:

Case No. 4460

OAH No. 2013110634

**ANTONIO MADRID**

403 Ruby Ave.  
Redlands, CA 92374

Pharmacy Technician Registration  
No. TCH 79877

Respondent.

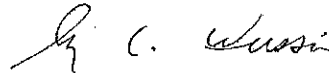
**DECISION AND ORDER**

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 August 11, 2014.

It is so ORDERED on July 11, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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

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In the Matter of the Accusation Against:

ANTONIO MADRID

Pharmacy Technician Registration  
No. TCH 79877,

Respondent.

Case No. 4400

OAH No. 2013110634

**PROPOSED DECISION**

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Bernardino, California, on May 20, 2014.

Deputy Attorney General Kevin J. Rigley represented complainant.

Antonio Madrid (respondent) represented himself.

The matter was submitted on May 20, 2014.

**FACTUAL FINDINGS**

1. The Accusation against respondent was filed by Virginia Herold (complainant), while acting in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (the board).

2. On January 7, 2008, the board issued Pharmacy Technician Registration No. TCH 79877 to respondent. Respondent's registration was in full force and effect at all relevant times.

*Respondent's 1996 Petty Theft Conviction*

3. On April 16, 1996, in Los Angeles County Superior Court, case number 6CR00215, respondent was convicted of violating California Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. Respondent's conviction involved dishonesty

and was for a crime that is substantially related to the qualifications, functions and duties of a pharmacy technician.

4. The facts underlying respondent's conviction are as follows: on April 15, 1996, respondent, who was 19 years old, entered a Thrifty's Store in Los Angeles, California; respondent was seen concealing an item of merchandise under his shirt; respondent attempted to leave the store without paying for the merchandise and was detained by store security; a bottle of whiskey was found concealed in respondent's waistband; and respondent was arrested for shoplifting.

5. As a result of his conviction, respondent was placed on one year of summary probation on certain terms and conditions.

6. Respondent successfully completed his criminal probation.

*Respondent's Failure to Disclose His 1996 Petty Theft Conviction*

7. On October 23, 2007, respondent signed, and thereafter submitted to the board, his application for licensure/registration. Question number 6 of the application asked: "Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances?" Respondent falsely answered the question by checking the "No" box.

*Respondent's February 8, 2011, DUI conviction*

8. On February 8, 2011, in San Bernardino County Superior Court, case number TWV1002562, respondent was convicted of violating California Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol (DUI)), a misdemeanor that is substantially related to the qualifications, functions and duties of a licentiate.

9. As a result of the DUI conviction, respondent was placed on three years of summary probation under certain terms and conditions.

10. The board was advised of respondent's DUI conviction and elected to issue respondent a warning letter as the appropriate level of discipline.

*Respondent's June 11, 2011, Alcohol-Related Arrest*

11. On June 11, 2011, a California Highway Patrol officer detained respondent for suspicion of DUI. The officer detected the strong odor of alcohol on respondent's breath. Additionally, respondent had red, blood-shot, watery eyes. Accordingly, the officer used a Preliminary Alcohol Screening (PAS) device to test respondent's blood alcohol level. The PAS tests indicated that respondent's blood alcohol content was 0.17%. Consequently, respondent was arrested for DUI.

12. On October 12, 2011, a criminal complaint was filed against respondent. The complaint charged respondent with violating California Vehicle Code sections 23152, subdivision (a) (DUI), and 23152, subdivision (b) (driving while having 0.08% or more, by weight, of alcohol in the blood), misdemeanors.

13. Respondent's "speedy trial rights" were violated when the complaint against him was not timely prosecuted; therefore, on December 11, 2013, all counts contained in the criminal complaint against respondent were dismissed, in furtherance of justice, pursuant to California Penal Code section 1385.

#### *Respondent's Evidence*

14. Respondent admitted that he falsely answered the prior conviction question in his 2007 application for licensure because he was afraid his application would be denied. When respondent saw the prior conviction question on the application, he "panicked" and checked the "No" box instead of disclosing his 1996 petty theft conviction.

15. Respondent's alcohol related arrests occurred in 2011, within five months of each other. At the time, respondent and his wife were experiencing marital difficulties and were considering separating. Respondent turned to alcohol "as an answer." Respondent stopped drinking alcoholic beverages after his June 11, 2011 arrest.

16. Respondent and his wife have resolved their marital issues and respondent is now in a stable home environment. Respondent's wife does not drink alcohol and she supports respondent's sobriety.

17. Respondent has been working as a pharmacy technician at the AIDS Healthcare Foundation located in downtown Los Angeles, California. Respondent has been working at the AIDS Healthcare Foundation for the past 10 years. Respondent presented two character reference letters from pharmacists who work with him at the AIDS Healthcare Foundation. Both of the pharmacists attested to the fact that respondent is a trusted and valued pharmacy technician and that he has had no patient complaints. Mahshid Aalam wrote:

This letter is a personal recommendation for Mr. Antonio Madrid. I have worked with Antonio for more than 10 years, and have always enjoyed his quality of work, his honesty, ethics, and humor. Antonio is one of the pharmacy technician's [sic] I know I can rely on to get the job completed. Antonio is always on time, and takes his work serious[ly]. Antonio also has an excellent attitude and our patients love him. He is a team player and a leader. Antonio represents AHF like we want our patients to experience health care. (Exh. E)

18. Respondent's wife testified as follows: she has known respondent since she was 17 years old; she and respondent were high school sweethearts; she "despises" alcohol and, since respondent's 2011 arrest, he has become a "changed man;" she and respondent "stay away from activities that involve alcohol;" respondent has a "great record" as a pharmacy technician; her grandmother is very ill and is now living with respondent and her; she is a graphic design artist but finds it difficult to devote enough time to work to make enough money to make ends meet; due to financial difficulties, her student loans are on hold, as are the couple's utility bills; respondent is dedicated to his job and the patients at the Aids center; and, respondent has aspirations of eventually becoming a pharmacist.

### *Evaluation of the Evidence*

19. Respondent was truthful and brutally honest during his testimony. He did not make any excuses for failing to disclose his 1996 conviction in his 2007 application for licensure; rather, he admitted he intentionally failed to disclose his 1996 conviction due to his fear of having his application denied. Respondent expressed true remorse for having given in to temptation by attempting to conceal his conviction. Respondent readily acknowledged that truthfulness and honesty are attributes that must be possessed by licentiates, and he convincingly established that his single act of dishonesty represented an isolated incident without likelihood of recurrence.

20. Respondent had two arrests that involved incidents reflecting alcohol abuse; however, it does not seem that respondent is an alcoholic. Respondent is willing to refrain from drinking alcohol as a condition of probation if he is granted probation.

21. There was no evidence that respondent posed a danger to the AIDS center patients. In fact, the evidence revealed that respondent is well respected by patients, supervisors, and fellow employees.

### *Costs*

22. The actual and reasonable costs of the investigation and enforcement of this case total \$3,405.

## LEGAL CONCLUSIONS

1. Cause exists for discipline of respondent's Pharmacy Technician Registration pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, because, as set forth in the findings, respondent was convicted of crimes that are substantially related to the qualifications, functions and duties of a licentiate/registrant.

2. Cause exists for discipline of respondent's Pharmacy Technician Registration pursuant to Business and Professions Code section 4301, subdivision (f), because, as set forth

in the findings, respondent committed acts involving dishonesty and deceit with the intent to substantially benefit himself.

3. Cause exists for discipline of respondent's Pharmacy Technician Registration pursuant to Business and Professions Code section 4301, subdivision (h), because, as set forth in the findings, respondent used alcoholic beverages in an extent or manner dangerous to himself and the public.

4. Cause exists for discipline of respondent's Pharmacy Technician Registration pursuant to Business and Professions Code section 4301, subdivision (g), because, as set forth in the findings, respondent knowingly made a false statement of fact to the board by failing to disclose his 1996 petty theft conviction in his 2007 application for licensure.

#### *Costs*

5. The reasonable costs of the investigation and enforcement of this case against respondent, recoverable pursuant to Business and Professions Code section 125.3, total \$3,405. However, the findings established that respondent and his wife lack the ability to pay any cost recovery whatsoever. This factor is relevant under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.

#### *Evaluation of the Appropriate Level of Discipline*

6. The purpose of an administrative proceeding seeking the revocation or suspension of a professional license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817; *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

7. The acts that led to respondent's DUI incidents were situational. Respondent and his wife have resolved the situations that led to respondent's alcohol abuse, and respondent fully appreciates that fact that alcohol is not an answer to difficulties; rather, it just leads to further dangers and problems. Respondent no longer consumes alcohol and an order requiring abstinence, as a condition of probation, will adequately protect the public. Respondent's single, immature act of dishonesty by failing to reveal his 1996 petty theft conviction on his 2007 application represented an isolated act without likelihood of recurrence. Respondent was visibly embarrassed and humiliated by this omission and he expressed true remorse during his testimony. Finally, respondent is an excellent worker and is well respected by his current employer. Consequently, it would not be adverse to the public health, safety or welfare to place respondent's license/registration on probation for three years under terms and conditions designed to ensure public protection.

## ORDER

Pharmacy Technician License/Registration number TCH 79877 is revoked; however, the revocation is stayed and respondent is placed on probation for three 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. Respondent shall not resume working as a pharmacy technician until notified by the board.

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 license/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.

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 this decision and 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 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 this decision 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 this in advance of 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 or she has read this decision 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 respondent is considered an employee, independent contractor or volunteer.

#### **7. Reimbursement of Board Costs**

Respondent is not required to reimburse the board for the costs of the investigation and enforcement of this case due to his inability to pay any awarded costs

#### **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 respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his or 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 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 80 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 80 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 80 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 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

### **13. Violation of Probation**

If 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. 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 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.

**15. Completion of Probation**

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

Dated: June 12, 2014

  
ROY W. HEWITT  
Administrative Law Judge  
Office of Administrative Hearings

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7  
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**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 4400

12 **ANTONIO MADRID**  
403 Ruby Ave  
13 Redlands, CA 92374

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

14 Pharmacy Technician Registration No. TCH 79877

15 Respondent.

16  
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 January 7, 2008, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 79877 to Antonio Madrid (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on June 30, 2013, unless 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.

28 *///*

1 4. Section 4300.1 states:

2 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by  
3 operation of law or by order or decision of the board or a court of law, the placement of a license  
4 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board  
5 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary  
6 proceeding against, the licensee or to render a decision suspending or revoking the license."

7 **STATUTORY PROVISIONS**

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

11 6. Section 490 states, in pertinent part:

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

16 "(b) Notwithstanding any other provision of law, a board may exercise any authority to  
17 discipline a licensee for conviction of a crime that is independent of the authority granted under  
18 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
19 of the business or profession for which the licensee's license was issued.

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

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

28 ///

1. 8. Section 4301 states, in pertinent part:

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

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

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

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

8 . . . .

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

12 "(g) Knowingly making or signing any certificate or other document that falsely  
13 represents the existence or nonexistence of a state of facts.

14 . . . .

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

20 . . . .

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

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

10 . . . .

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

15 **REGULATORY PROVISIONS**

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

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

23 **COST RECOVERY**

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

28 ///



1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Convictions of Substantially Related Crime)**

3 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
4 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
5 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
6 duties of a pharmacy technician. On or about April 16, 1996, Respondent was convicted of one  
7 misdemeanor count of violating Penal Code section 484, subdivision (a) [petty theft] in the  
8 criminal proceeding entitled *The People of the State of California v. Antonio Madrid* (Super. Ct.  
9 Los Angeles County, 1996, No. 6CR00215). The Court sentenced Respondent to serve 5 days in  
10 Los Angeles County Jail and placed him on 12 months probation, with terms and conditions. The  
11 circumstances surrounding the conviction are that on or about April 15, 1996, Respondent entered  
12 a Thrifty's Store in Los Angeles, CA. He was observed taking an item and attempting to leave  
13 the store without paying for it. Respondent was detained and a bottle of whiskey that he had  
14 concealed in his front waistband was recovered.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Acts Involving Dishonesty, Fraud, or Deceit)**

17 12. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
18 that on or about April 15, 1996, Respondent committed acts involving dishonesty, fraud, or deceit  
19 with the intent to substantially benefit himself, or substantially injure another. Complainant refers  
20 to, and by this reference incorporates, the allegations set forth above in paragraph 10, as though  
21 set forth fully.

22 **THIRD CAUSE FOR DISCIPLINE**

23 **(Dangerous Use of Alcohol)**

24 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in  
25 that Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to  
26 himself, another person, or the public, as follows:

27 a. On or about June 11, 2011, during an investigation by the California Highway Patrol,  
28 Respondent was contacted. While speaking to Respondent the officer detected a strong odor of

1 an alcoholic beverage emitting from his breath. He was observed to have red watery eyes. When  
2 asked if he had consumed alcohol, Respondent admitted to having consumed a pint of beer earlier  
3 that night. While at the scene, Respondent submitted to two Preliminary Alcohol Screening Tests  
4 that resulted in a breath alcohol content level of 0.17% on both readings. On or about October 12,  
5 2011, a criminal case was filed against Respondent, charging him with one misdemeanor count of  
6 violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol or  
7 drugs], one misdemeanor count of Vehicle Code section 23152, subdivision (b) [driving while  
8 having 0.08% or more, by weight, of alcohol in his blood], and one misdemeanor count of  
9 Vehicle Code section 14601.2, subdivision (a) [driving while driving privileges are suspended or  
10 revoked with knowledge] in the criminal proceeding *The People of the State of California v.*  
11 *Antonio Madrid* (Super. Ct. Los Angeles County, 2011, No. 1GN03794). Respondent failed to  
12 appear on November 1, 2011 and the Court issued an arrest warrant for \$26,000. As of January  
13 10, 2013, the warrant is still outstanding.

#### 14 **FOURTH CAUSE FOR DISCIPLINE**

##### 15 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

16 13. Respondent is subject to disciplinary action under section 4301, subdivision (g), in  
17 that on or about October 23, 2007, Respondent knowingly made a false statement of fact to the  
18 Board by failing to disclose his 1996 conviction on his initial application for licensure.  
19 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
20 paragraph 10, as though set forth fully.

#### 21 **DISCIPLINARY CONSIDERATIONS**

22 14. In Order to determine the degree of discipline, if any to be imposed on Respondent,  
23 Complainant alleges, as follows:

24 a. On or about February 8, 2011, after pleading nolo contendere, Respondent was  
25 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)  
26 [driving under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of*  
27 *the State of California v. Antonio Madrid* (Super. Ct. San Bernardino County, 2011, No.  
28 TWV1002562). The Court ordered pronouncement of judgment withheld and conditional and

1 revocable release granted for a period of 36 months, with terms and conditions. The  
2 circumstances surrounding the conviction are that on or about August 29, 2010, Respondent  
3 drove a vehicle while under the influence of alcohol or drugs and was arrested.

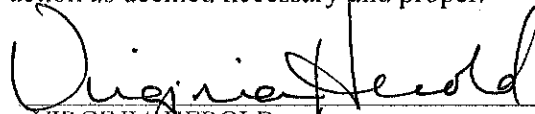
4 b. On or about February 16, 2011, the Board issued a warning letter to Respondent as a  
5 result of the events in connection with that which is set forth in paragraph 14(a) above.

6 **PRAYER**

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

- 9 1. Revoking or suspending Pharmacy Technician Registration No. TCH 79877, issued  
10 to Antonio Madrid;
- 11 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and  
12 enforcement of this case, pursuant to section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: 7/22/13

  
15 VIRGINIA HEROLD  
16 Executive Officer  
17 Board of Pharmacy  
18 Department of Consumer Affairs  
19 State of California  
20 Complainant

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