

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

In the Matter of the Accusation Against:

**ANGEL E. ORELLANA , also known as
ANGEL ERNESTO ORELLANA**

Pharmacy Technician Registration
No. TCH 59395,

Respondent.

Case No. 4500

OAH No. 2013041143

FINAL DECISION AFTER RECONSIDERATION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on July 15, 2013, in Oakland, California.

Deputy Attorney General Susana A. Gonzales represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Angel Ernesto Orellana was present and was self-represented.

The record closed and the matter was submitted for decision on July 15, 2013.

The Administrative Law Judge issued his Proposed Decision on August 9, 2013. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board"). After due consideration thereof, the Board of Pharmacy adopted said proposed decision on September 25, 2013 to become effective on October 25, 2013. Complainant filed a timely Petition for Reconsideration, and on October 24, 2013, the Board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective Date of Decision and Order.

Written argument having been timely received from Complainant, and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Government Code section 11517, hereby decides this matter as follows:

FACTUAL FINDINGS

1. On October 22, 2004, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 59395 to respondent Angel E. Orellana, who is also known as Angel Ernesto Orellana. The registration was in full force and effect during all times relevant to this proceeding. It will expire, if not renewed, on May 31, 2014.

Criminal Conviction

2. On May 22, 2012, respondent was convicted in the Superior Court of California, County of San Francisco, on his plea of nolo contendere to a violation of Vehicle Code section 23103, reckless driving, a misdemeanor. Respondent was placed on informal probation for 18 months, on terms and conditions that included completion of a First Offender's Program, and payment of fines, fees and assessments.

3. The offense took place on February 26, 2012. Respondent was pulled over by California Highway Patrol officers for speeding and swerving while driving on the Oakland Bay Bridge. Respondent failed field sobriety tests that were administered, and he was placed under arrest. Breathalyzer tests performed at the CHP office showed respondent to have blood alcohol levels of 0.212 and 0.215 percent.

4. Respondent has been compliant with probation to date. He remains on informal probation until November 2013. This is respondent's first criminal conviction.

Possession of Cocaine

5. During booking for the arrest set forth in Finding 3, above, cocaine was found in respondent's sock. While the evidence established that respondent possessed cocaine, it did not establish that he used the cocaine, or that he possessed it for a purpose other than his own use. Respondent was placed in a diversion program in connection with his possession of cocaine.

Unprofessional Conduct

6. Supervising Investigator William Benjamin Young, Pharm.D., testified as an expert for complainant. In his opinion, respondent's conduct of driving under the influence and possessing cocaine demonstrates extremely poor judgment as well as a lack of self-control, which gives rise to a concern about respondent's fitness to perform the duties of a pharmacy technician with safety to the public. Respondent's position as a pharmacy technician at Abbott's Compounding Pharmacy, a sterile compounding pharmacy, requires him to exercise of a great deal of judgment on a daily basis. His job duties include assisting the pharmacist to access the correct prescription, and to package the correct drug at the correct strength. Respondent's position gives him unlimited access to dangerous drugs and controlled substances, as well as to confidential medical and financial information. Young notes that errors committed

during compounding can have dire consequences for patients. He further notes that unlimited access to dangerous drugs and controlled substances over time can numb one's sense of right and wrong and lead to diversion and theft. The largest cause of loss of controlled substances in a pharmacy is internal theft by employees.

Other Matters

7. Investigator Young had occasion to interview respondent during an investigation regarding an unrelated matter at Abbott's Pharmacy. Respondent was fully cooperative and forthright with Investigator Young during that interview.

8. Respondent offers no excuses for his conduct of drinking and driving a vehicle and for possessing cocaine. The conduct was part of a downward spiral stemming from an emotional breakup with the mother of his children. On the night he drove while intoxicated, respondent believed that he was less intoxicated than his companion and could drive safely. He now understands that he was in no condition to drive. With respect to the cocaine, he was carrying it for someone else, but he had considered using it later that evening. Respondent has never actually used cocaine.

9. Through his diversion program, respondent attended weekly group therapy sessions one-a-week for 25 weeks, and he was subject to random drug testing. Respondent successfully completed the diversion program February 13, 2013.

As part of his criminal sentence, respondent was required to attend a three-month First Offender Program for driving under the influence, which he completed December 1, 2012.

Through attendance at these court-ordered programs and classes, respondent addressed the stress he was feeling from his personal situation and "got it off [his] chest." He observed people who had it worse than he, and saw people relapse, which he did not do.

10. Respondent independently attended four sessions of one-on-one therapy in which he also worked on his personal issues and dealing with stress.

11. Respondent has a much more stable and nonconfrontational relationship with the mother of his children. He was awarded joint custody of his two children in December 2012.

12. Respondent's arrest and conviction helped to "wake [him] up" and realize that by his conduct he was jeopardizing a career that he had worked hard to obtain. He also realized that his conduct made his stress worse, rather than better. The conviction and diversion were expensive lessons for him. He knows that he has to "step it up" and not make matters worse.

13. Respondent has been licensed as pharmacy technician since 2004. He started his career at Crescent Home Care Infusion, after which he worked for a Walgreens pharmacy in San Francisco (located at 18th and Mission) for about two and one-half years. Respondent has been employed by Abbotts' Compounding Pharmacy, Inc., since March 2007. Pharmacist John Garcia is president of the company. In a letter dated June 12, 2013, Garcia attests to respondent's good character, and to his professionalism and good judgment at work. Garcia considers respondent a "very important and valued" employee.

14. This is respondent's first disciplinary action with the Board.

Costs

15. Complainant seeks to recover from respondent the costs of investigation and prosecution of this matter pursuant to Business and Profession Code section 125.3. The board has incurred \$3,215 in charges from the Department of Justice, representing 17.5 hours of attorney time, and two hours of paralegal time. Complainant submitted a declaration from the assigned deputy attorney general listing in general the tasks she performed and the time she spent on those tasks. Respondent presented no evidence to the contrary. Given the nature of the case and the number of hours charged, the costs are found to be reasonable.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4301, the board may discipline a licensee who is guilty of unprofessional conduct. By reason of the matters set forth in Factual Findings 2, 3, 5 and 6, respondent committed an act of unprofessional conduct by driving a vehicle while intoxicated and by possessing cocaine. Cause for license discipline therefore exists pursuant to Business and Professions Code section 4301.

2. Pursuant to Business and Professions Code section 4301, subdivision (h), the board may discipline a licensee who has used alcohol in a dangerous manner. By reason of the matters set forth in Findings 2 and 3, respondent used alcohol in a manner which was dangerous to himself, his passenger, and the public. Cause for license discipline therefore exists pursuant to Business and Professions Code section 4301, subdivision (h).

3. Pursuant to Business and Professions Code section 4301, subdivision (l), the board may discipline a licensee who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. A crime is substantially related to the qualifications, functions, or duties of a licensee "if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by the license or registration in a manner consistent with the public health, safety or welfare." (Cal. Code Regs., tit. 16, § 1770.) By reason of the matters set forth in Findings 2, 3 and 6, Respondent's conviction of

reckless driving is substantially related to the qualifications, functions or duties of a pharmacy technician in that it evidences the present or potential unfitness of respondent to perform the functions authorized by his registration in a manner consistent with public health, safety or welfare. Cause for license discipline therefore exists pursuant to Business and Professions Code section 4301, subdivisions (l).

4. The protection of the public is the board's highest priority. (Bus. & Prof. Code, § 4001.1.) In evaluating rehabilitation, and in determining the appropriate level of discipline in this matter, the board's paramount concern is also the protection of the public. (Bus. & Prof. Code, §§ 4001.1 & 4313.) Based upon all the evidence presented, and in consideration of the board's criteria of rehabilitation (Cal. Code Regs., tit. 16, § 1769), it is determined that the public interest will be adequately protected by allowing respondent to retain his pharmacy technician registration on a probationary basis.

The factors set forth in considered in making this determination are as follows: Respondent's misconduct took place less than two years ago, and his conduct was serious and inexcusable. However, this is respondent's first criminal offense, and he has been fully compliant with the terms and conditions of his criminal probation. The evidence established that he takes full responsibility for his conduct, and that he learned from, and engaged in personal growth, as a result of it. Respondent has worked in the industry for over eight years without incident. While there is no question that the conduct is substantially related to the licensed activity, the evidence also establishes that it is unlikely that he will engage in similar unprofessional conduct in the future. Placing respondent on probation to the board will be yet another reminder for him of the need to stay committed to his profession, his professionalism, and the need to continue to "step it up" and be mindful that his personal actions outside of his employment can jeopardize his licensure with the board. In consideration of the above, it is concluded that it would not be against the public interest to allow respondent to retain a pharmacy technician registration license on a probationary basis with standard terms and condition of probation.

5. Business and Professions Code section 125, subdivision (a), authorizes the administrative law judge to order a licentiate found to have violated a licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. By reason of the matters set forth in Factual Finding 15, it is determined that the costs of \$3,215 incurred by the agency in the investigation and enforcement of this matter are reasonable.

As instructed by the California Supreme Court in *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. Each of the factors set forth in *Zuckerman* has been considered. There is no basis for reduction of the costs in this matter.

ORDER

Pharmacy technician registration number TCH 59395 issued to respondent Angel E. Orellana is revoked; however, the revocation is stayed, and respondent is placed on probation for a period of 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 or she 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 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.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the board within 72 hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician 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 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 for two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4500 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4500, and 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.

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 entity licensed by the board of the terms and conditions of the decision in case number 4500 in advance of respondent commencing work at each licensed entity. 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 the decision in case number 4500 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 acknowledgments 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, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license is a requirement or criterion for employment, whether the respondent is an employee, independent contractor or volunteer.

7. Abstain from Drugs and Alcohol Use

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

8. Random Drug Screening

Respondent at his or 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 will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such

documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a designated representative until notified by the board in writing.

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

Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity 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.

9. 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 \$3,215. Respondent shall make said payments on a schedule directed by the board or its designee.

There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

10. 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 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.

11. Status of License

Respondent shall, at all times while on probation, maintain an active, current technician registration 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 technician registration 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.

12. License Surrender While on Probation

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

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall 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 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, including any outstanding costs.

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

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

14. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist technician in California for a minimum of 40 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 practicing as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of the cessation of practice, and must further notify the board in writing within ten (10) days of the resumption of practice. 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 practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in sections 4038 and 4115.

15. 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.

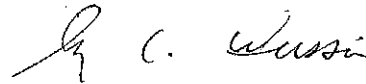
If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof 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.

16. Completion of Probation

Upon successful completion of probation, respondent's pharmacy technician registration will be fully restored.

This decision shall become effective on April 14, 2014.

IT IS SO ORDERED this 13th day of March, 2014.



STAN C. WEISSER
PRESIDENT

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

In the Matter of the Accusation Against:

ANGEL ORELLANA

Pharmacy Technician Registration No.
TCH 59395

Respondent.

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OAH No. 2013041143

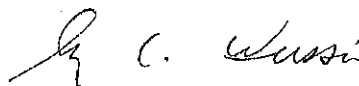
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER FIXING DATE FOR SUBMISSION OF ARGUMENT

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written arguments in accordance with the Order Granting Petition for Reconsideration dated October 24, 2013. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: If cause for discipline exists, what penalty, if any, should be applied in this case.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before December 27, 2013. **No new evidence may be submitted.**

IT IS SO ORDERD this 27th day of November 2013.



STAN C. WEISSER
President, Board of Pharmacy
Department of Consumer Affairs

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

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ANGEL ERNESTO ORELLANA

Pharmacy Technician Registration No.
TCH 59395,

Respondent.

Case No. 4500

OAH No. 2013041143

**ORDER GRANTING
PETITION FOR
RECONSIDERATION AND
STAY OF EXECUTION OF
THE EFFECTIVE DATE OF
DECISION AND ORDER**

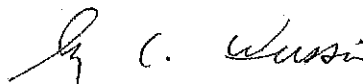
Complainant having requested reconsideration of the decision in the above-entitled matter, and good cause appearing, IT IS HEREBY ORDERED:

- (1) That reconsideration be, and is, hereby granted, said reconsideration to be upon all pertinent parts of the record and such additional written argument as the parties may wish to present;
- (2) That the parties will be notified of the date for submission of any written argument they may wish to submit when the transcript of the above-mentioned hearing becomes available; and;
- (3) The Decision of the Board in this matter issued on September 25, 2013, is hereby stayed until the Board renders its decision on reconsideration.

The board itself will decide the case upon the record, including the exhibits and written argument of the parties, without taking additional evidence.

IT IS SO ORDERED this 24th day of October, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

**BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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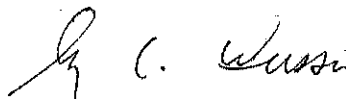
DECISION AND ORDER

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

This decision shall become effective on October 25, 2013.

It is so ORDERED on September 25, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on July 15, 2013, in Oakland, California.

Deputy Attorney General Susana A. Gonzales represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Angel Ernesto Orellana was present and was self-represented.

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Costs

15. Complainant seeks to recover from respondent the costs of investigation and prosecution of this matter pursuant to Business and Profession Code section 125.3. The board has incurred \$3,215 in charges from the Department of Justice, representing 17.5 hours of attorney time, and two hours of paralegal time. Complainant submitted a declaration from the assigned deputy attorney general listing in general the tasks she performed and the time

personal growth, as a result of it. Respondent has worked in the industry for over eight years without incident. While there is no question that the conduct is substantially related to the licensed activity, the evidence also establishes that it is unlikely that he will engage in similar unprofessional conduct in the future. Placing respondent on probation to the board will be yet another reminder for him of the need to stay committed to his profession, his professionalism, and the need to continue to "step it up" and be mindful that his personal actions outside of his employment can jeopardize his licensure with the board. In consideration of the above, it is concluded that it would not be against the public interest to allow respondent to retain a pharmacy technician registration license on a probationary basis with standard terms and condition of probation.

5. Business and Professions Code section 125, subdivision (a), authorizes the administrative law judge to order a licentiate found to have violated a licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. By reason of the matters set forth in Factual Finding 15, it is determined that the costs of \$3,215 incurred by the agency in the investigation and enforcement of this matter are reasonable.

As instructed by the California Supreme Court in *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. Each of the factors set forth in *Zuckerman* has been considered. There is no basis for reduction of the costs in this matter.

ORDER

Pharmacy technician registration number TCH 59395 issued to respondent Angel E. Orellana is revoked; however, the revocation is stayed, and respondent is placed on probation for a period of three years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the board within 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

terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4500 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4500, and 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.

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 entity licensed by the board of the terms and conditions of the decision in case number 4500 in advance of respondent commencing work at each licensed entity. 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 the decision in case number 4500 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 acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall

9. License Surrender While on Probation

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

Upon acceptance of the surrender, respondent shall relinquish his pocket and wall 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 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, including any outstanding costs.

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

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


11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacist technician in California for a minimum of 40 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

13. Completion of Probation

Upon successful completion of probation, respondent's pharmacy technician registration will be fully restored.

DATED: August 9, 2013



MELISSA G. CROWELL
Administrative Law Judge
Office of Administrative Hearings

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Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4500

12 **ANGEL E. ORELLANA, a.k.a. ANGEL**
13 **ERNESTO ORELLANA**
14 **60 Teddy Avenue**
San Francisco, CA 94134

ACCUSATION

15 **Pharmacy Technician Registration No. TCH**
59395

16 Respondent.

17
18 Complainant alleges:

19 PARTIES

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On or about October 22, 2004, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 59395 to Angel E. Orellana, also known as Angel Ernesto Orellana
24 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
25 relevant to the charges brought in this Accusation and will expire on May 31, 2014, unless
26 renewed.
27
28

JURISDICTION

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

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

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

7. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402, subdivision (e), of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

8. Section 4301 of the Code states:

“The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been 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

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the
2 practice authorized by the license.

3 ...

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

21 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or
22 revoke a license when it finds that the licensee has been convicted of a crime substantially related
23 to the qualifications, functions or duties of the license.

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

25 “For the purpose of denial, suspension, or revocation of a personal or facility license
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 licensee or registrant to perform the functions authorized by his license or registration in a manner
2 consistent with the public health, safety, or welfare.”

3 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

4 11. Section 4021 of the Code states:

5 “‘Controlled substance’ means any substance listed in Chapter 2 (commencing with Section
6 11053) of Division 10 of the Health and Safety Code.”

7 12. Section 4022 of the Code states, in pertinent part:

8 “‘Dangerous drug’ or ‘dangerous device’ means any drug or device unsafe for self use,
9 except veterinary drugs that are labeled as such, and includes the following:

10 “(a) Any drug that bears the legend: ‘Caution: federal law prohibits dispensing without
11 prescription,’ ‘Rx only,’ or words of similar import.

12 ...

13 “(c) Any other drug or device that by federal or state law can be lawfully dispensed only on
14 prescription or furnished pursuant to Section 4006.”

15 13. Cocaine is Schedule II controlled substance and a narcotic as designated by Health
16 and Safety Code section 11055, subdivision (b)(6), and a dangerous drug within the meaning of
17 Code section 4022.

18 COST RECOVERY

19 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
20 administrative law judge to direct a licentiate found to have committed a violation or violations of
21 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
22 enforcement of the case.

23 FACTS

24 15. On or about February 26, 2012, at approximately 1:35 a.m., two California Highway
25 Patrol Officers were on patrol and traveling westbound on Interstate 80, near the Treasure Island
26 on-ramp. Officer 1 was riding in the passenger seat of the patrol vehicle, and Officer 2 was
27 driving. Officer 1 first observed Respondent’s vehicle traveling in excess of 75 miles-per-hour in
28 a 50 mile-per-hour zone. Both officers observed Respondent’s vehicle swerving in and out of its

1 lane. Based upon these observations, the officers initiated an enforcement stop and instructed
2 Respondent to exit the Fremont Street off-ramp and park on a side street near the exit.

3 16. Officer 1 approached the driver's side of Respondent's vehicle and noticed that the
4 window was already rolled down. When Officer 1 asked Respondent why he was driving so fast,
5 Respondent stated that he was trying to take care of his passenger who had had too much to drink.
6 Officer 1 smelled the odor of an alcoholic beverage coming from within the vehicle. Officer 1
7 also noticed that Respondent's eyes were red and glassy and his speech was slow and slurred.
8 Respondent admitted that he consumed two small cups of beer at a friend's house in Richmond
9 that night. Officer 1 asked Respondent to exit the vehicle. Respondent's gait was very unsteady
10 as walked to the sidewalk. Respondent then admitted that he had actually consumed four small
11 cups of beer at his friend's house.

12 17. Officer 1 asked Respondent to perform a series of Field Sobriety Tests (FSTs), which
13 Respondent failed to perform as explained and demonstrated. Officer 1 concluded that
14 Respondent had been driving under the influence and arrested him for violating Vehicle Code
15 section 23152, subdivision (a) (driving under the influence of alcohol or drugs). Officer 1
16 informed Respondent of implied consent, and Respondent chose the breath test. Once he was
17 transported to the San Francisco CHP office he completed the breath test, which showed that he
18 had a blood alcohol content of .212 percent and .215 percent. Respondent was then transported to
19 San Francisco County Jail for booking.

20 18. Once they arrived to the San Francisco County Jail, Officer 2 escorted Respondent to
21 a holding cell for a complete search with a metal detector. During the complete search,
22 Respondent removed a clear plastic bag containing a white powdery substance from his right
23 sock. When Officer 1 learned of what had been found in Respondent's sock, he informed
24 Respondent that he would be adding a charge for violation of Health and Safety Code section
25 11350, subdivision (a) (possession of controlled substance) to Respondent's booking card. After
26 Officer 1 walked away, Officer 2 heard Respondent say, "It's Cocaine and I am going to lose my
27 job." The substance tested positive for Cocaine on a presumptive test.

28

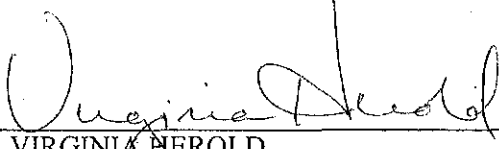
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2. Ordering Angel E. Orellana, also known as Angel Ernesto Orellana to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED:

2 / 12 / 13



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

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