



California State Board of Pharmacy
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BUSINESS & CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

REC-2015 APR -6
 PHARMACY

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

| | |
|---|-------------------------|
| Name: <u>Jonathan Alvarez</u> | Case No. <u>4556</u> |
| Address of Record: <u>7574 Hellman Ave</u> <u>Rosemead CA 91770</u> | |

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 4556, I hereby request to surrender my pharmacy technician license, License No. 111189. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

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

[Signature]
 Applicant's Signature

Virginia Heald
 Executive Officer's Approval

4/2/15
 Date

4/14/15
 Date

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

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

In the Matter of the Accusation
Against:

JONATHAN ALVAREZ,

Pharmacy Technician Registration
No. TCH 111189,

Respondent.

Case No. 4556

OAH No. 2014060209

FINAL DECISION AFTER RECONSIDERATION

On September 19, 2014, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles. Complainant was represented by Heather Hua, Deputy Attorney General. Respondent Jonathan Alvarez was present and represented himself.

At the conclusion of the hearing, the Administrative Law Judge requested that complainant's counsel file a brief on the issue of whether a deferred entry of judgment followed by completion of a drug program and dismissal of the criminal charges constituted a criminal conviction. On September 24, 2014, the Deputy Attorney General timely filed a Closing Brief, which was marked as Exhibit 9.

The Administrative Law Judge issued his Proposed Decision on October 21, 2014. The Proposed Decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("board"), and after due consideration thereof, the board adopted the proposed decision on November 12, 2014, to become effective on December 12, 2014. On November 18, 2014, Complainant filed a Petition for Reconsideration. On December 1, 2014, the board issued an Order Granting Petition for Reconsideration and Stay of Execution of the Effective Date of Decision and Order. On December 19, 2014, the board issued an Order Fixing Date for Submission of Argument.

Written argument having been timely received from both parties, 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. The Administrative Law Judge takes official notice that, on February 4, 2014, Accusation, Case Number 4556, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On or about February 28, 2011, the Board issued pharmacy technician registration number TCH 111189 to Jonathan G. Alvarez (respondent). Said registration was in full force and effect at all times relevant herein and expires on March 31, 2016, unless renewed. Respondent does not have a prior disciplinary history with the Board.

3. Respondent completed the eight-month curriculum and educational requirements for issuance of a pharmacy technician registration at Everest College in 2011. After obtaining his pharmacy technician registration from the Board, he became employed as a full-time pharmacy technician at Hygeia, a long-term care and closed-door pharmacy.

Respondent's Criminal Case

4. (A) On March 13, 2012, before the Superior Court of California, County of Los Angeles, in *People v. Jonathan Alvarez*, Case No. 1CA17510, respondent pleaded nolo contendere to a violation of Health and Safety Code section 11375, subdivision (b)(2) (possession of a controlled substance for sale), a misdemeanor. The court adjudged respondent to be guilty and found a factual basis for his plea but placed him on deferred entry of judgment for 18 months pending his completion of a drug diversion program pursuant to Penal Code sections 1000 and 1000.2.¹

B) On March 13, 2012, the court ordered respondent, in pertinent part, not to use or possess any narcotics, dangerous or restricted drugs, or associated paraphernalia, except with a valid prescription; participate in a drug abuse education, treatment, or rehabilitation program as directed by a probation officer; enroll in and complete an approved controlled substances treatment program; submit to periodic anti-narcotic tests; pay administrative fees totaling \$250; not own, use, or possess any dangerous or deadly weapons; and obey all laws and orders of the court. Respondent was also ordered to be released to an authorized representative of the controlled substance treatment program and to comply with all of the terms and conditions of the

¹ The court docket (Exh. 5) states that the disposition of the case was deferred entry of judgment and that respondent waived time for entry of judgment pursuant to Penal Code section 1000.2. The court docket also described respondent's custody after his March 13, 2012 court appearance as "on diversion."

program. If he left or was discharged from the treatment program for any reason, respondent was ordered to report to court on the next day.

5. (A) As established by the arrest report of the Los Angeles Police Department (LAPD) and respondent's testimony, in the evening of November 4, 2011, respondent and his friend Jay Bello went to a bar or night club. Bello drove the two of them there in his car. Respondent brought with him a small plastic baggie containing an undetermined number of one milligram tablets of Xanax, a controlled substance.² Respondent testified that he obtained the Xanax from a neighborhood friend who might have had a prescription. At the nightclub or bar, respondent and Bello drank alcoholic beverages, including Vodka, and ingested Xanax. Respondent also gave Xanax tablets to his friends so that they would have a good time. Both respondent and his friend Bello became intoxicated from alcohol.

(B) Sometime before 3:00 a.m., on November 5, 2011, respondent and Bello left the bar or nightclub. Bello drove. He collided with another vehicle, causing minor damage to the front end of his car. The driver of the other vehicle called the police. At approximately 3:00 a.m., LAPD officers were dispatched to what was reported as an alcohol-related traffic collision. At the scene of the accident, the officers found respondent and Bello standing or sitting outside of Bello's car. The officers contacted the driver of the other vehicle who stated that Bello had hit his car. Bello admitted to the officers that he had been driving. Respondent, who was sitting on the curb, began yelling at the officers. He stood up and began walking to the officers. He then fell face-down in the street. Bello told the officers that respondent was drunk.

(C) The police officers determined that Bello displayed the physical signs of intoxication. Bello said he had drunk four beers. The officers found three empty bottles of beer in Bello's vehicle. When the officers looked inside Bello's car, respondent began yelling at them again. He stumbled while walking in the street. The officers determined respondent was also intoxicated and was unable to care for himself. Respondent was arrested for being drunk in public. Next, the officers had Bello perform field sobriety tests which he was unable to complete. Thereupon, the officers arrested Bello for driving while under the influence of an alcoholic beverage.

(D) At the police station, Bello underwent a breath test which revealed that his blood alcohol content was 0.08 percent, which was above the legal limit. During a book search of respondent, one of the arresting officers found the small plastic baggie with 34 pills inside respondent's sock. When asked about the pills, respondent told the officers that the pills were Xanax. He stated he did not want to say anything more about the pills or say where he got the pills. After the officer indicated

² Xanax is a Scheduled IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug under Health and Safety Code section 422. Xanax is a benzodiazepine that is given for the treatment of anxiety, depression, and seizures and causes the side effects of drowsiness and euphoria. As a controlled substance, Xanax requires a triplicate prescription.

that he knew respondent worked as a pharmacy technician at a pharmacy, respondent stated he received the Xanax from a friend and was not taking all of the Xanax himself but was giving the tablets to friends. Respondent was arrested for being in possession of a controlled substance. It was not established that respondent had an unusual amount of money or number of bills in his possession when he was booked and searched at the police station.

6. (A) One month after his court appearance, on April 12, 2012, respondent enrolled in the Drug Diversion Program at Didi Hirsch Mental Health Services in Glendale, pursuant to the deferred entry of judgment and Penal Code section 1000. The Drug Diversion Program consisted of one intake session, 18 educational group sessions, one exit session, and 20 12-step meetings.

(B) Five months later, on September 12, 2012, respondent successfully completed all of the requirements of the Drug Diversion Program at Didi Hirsch Mental Health Services. As corroborated by a letter from the substance abuse counselor, respondent attended 18 weekly sessions of group classes in drug education and the 20 meetings of Alcoholics or Narcotics Anonymous. He paid the program fees of \$565 in full.

7. On or before September 13, 2012, respondent paid the fees and fines ordered by the court, which included the \$150 administrative fee and the restitution fine of \$10.

8. On or about September 13, 2012, respondent returned to court for a progress report on his deferred entry of judgment and drug diversion program. Because he had completed the drug diversion program at Didi Hirsch Mental Health Services, the court dismissed the charge of violating Health and Safety Code section 11375, subdivision (b)(2), and adjudged respondent not guilty of the charge. As a result, respondent was not convicted of the drug possession charge and has no convictions on his record. He does not have a criminal record.

9. (A) Based on Finding 5 above, respondent used alcohol or ingested an alcoholic beverage or beverages to an extent or in a manner as to be dangerous or injurious to himself, another person, or the public.

(B) Based on Finding 5 above, respondent possessed a controlled substance or dangerous drug without having been furnished the controlled substance or dangerous drug upon a prescription by a physician, in violation of Business and Professions Code section 4060.

10. Respondent admits his wrongdoing and demonstrated remorse for his conduct. He acknowledges that, on the night of his arrest, he was intoxicated due to drinking Vodka and that he illegally possessed one-milligram tablets of Xanax. He admits that he ingested Xanax and gave one-milligram tablets of Xanax to his friends at the bar or nightclub. He is not sure how many tablets that he gave away due to

being intoxicated. Respondent ingested the Xanax because he was having financial and family difficulties at the time and used the drug to escape his troubles. He recognizes that it was dangerous to take and allow his friends to take Xanax.

11. Respondent works as a pharmacy technician at Hygeia where he has access to controlled substances. However, it was not shown that respondent diverted the Xanax that he possessed on the night of his arrest from his employer or stole or took the controlled substance from any other source. As established by his testimony, respondent told his supervising pharmacist at Hygeia about his arrest. The Administrative Law Judge takes official notice that the Board's internet website contains public information about the issuance and details of the pending Accusation in this matter.

12. Respondent obtained a letter of reference from his employment at Hygeia. Peggy Lu, Pharm.D., is a licensed pharmacist at Hygeia and has supervised respondent for the past three years. Lu lauds respondent's professionalism, dedication, and attitude. As established by Lu's letter (Exh. A), respondent often volunteers for additional duties at the pharmacy, such as answering telephone calls, organizing and cleaning work spaces, and helping to manage the inventory. Lu indicates respondent is a "quick learner" and has a "team player mind-set." He is able to work with minimal supervision, is accurate, and gives his attention to details of his job. He learned to process prescriptions that were initially unfamiliar to him and attends optional professional development classes offered by the pharmacy. Respondent trains new hires or new pharmacy technicians so that they can accurately prepare and fill prescriptions. Lu regularly receives praise from pharmacy colleagues about respondent's work and she ranks him as one of the best pharmacy technicians at Hygeia.

13. Respondent no longer takes Xanax or any illegal drug. He has not taken drugs for the past 18 months. He does not drink Vodka or any other "hard liquor". Respondent drinks beer on occasion at family gatherings. After completing the drug education program in September 2012, respondent continued to attend a few AA meetings but relies mainly on his family to keep him busy and sober.

14. Respondent is now 24 years old. He and his girlfriend have a two-year old son and live together as a family in Rosemead. His girlfriend works in purchasing and delivery for a paint company. Since the birth of his son in September 2012, respondent has been busy caring for him. He completed the drug diversion program and stopped using illegal drugs and drinking to excess. He does not associate with the same people with whom he went drinking and partying before.

15. Respondent hopes to be able to retain his pharmacy technician registration so that he can support his family. He has been financially responsible by paying his student loan, car payment, and household expenses and wants to continue doing so. Respondent was a credible witness.

16. As established by the testimony of Sejal Raman Desai, B.S., Pharm.D., a licensed pharmacist and an inspector for the Board, a registered pharmacy technician is authorized to work in different pharmaceutical settings, including retail, hospital, home health care, skilled nursing facility, closed door pharmacy, pharmacy benefit management office, and compounding pharmacy. In these settings, the duties of a registered pharmacy technician may include ordering, stocking, and dispensing or delivering medications, calling physicians for refills of medications, taking and filling prescriptions, and making and packaging medications. A registered pharmacy technician must be supervised by a licensed pharmacist who is responsible for the actions of the pharmacy technician. The supervising pharmacist cannot necessarily guarantee that a pharmacy technician will not take, dilute, or divert medications. A registered pharmacy technician is expected to perform his or her duties in an honest and truthful manner and to obey all applicable laws.

17. The costs of investigation and enforcement of this matter totaled \$4,692, as set forth in the Certification of Prosecution Costs (Exh. 3).

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that it was not established that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician, based on Findings 4 – 8 above.

Penal Code section 1000.1, subdivision (d), provides that a plea of guilty pursuant to the deferred entry of judgment statutes or program shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to section 1000.3. Penal Code section 1000.3 provides that, if defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed.

In her Closing Brief, complainant's counsel conceded that the First Cause for Discipline for conviction of a crime should be withdrawn provided that respondent showed evidence that he — completed the deferred entry of judgment program. Here, respondent pleaded guilty to possession of a controlled substance for sale and was placed on the deferred entry of judgment for 18 months pending his completion of a drug diversion program. He then successfully completed the drug diversion program at Didi Hirsch Mental Health and he testified credibly that the court thereafter dismissed the criminal charge and adjudged him not guilty. Accordingly, respondent completed the deferred entry of judgment program and was not convicted of any crime.

2. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h), in that respondent used alcoholic beverages to an extent or in a manner as to be dangerous or injurious to himself, another person, or the public, based on Finding 9(A) above. Respondent drank alcoholic beverages at a bar or nightclub, became intoxicated, and tried to get into arguments with a police officer after his friend got into an automobile accident.

3. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), in that respondent violated a statute of this state regulating controlled substances and dangerous drugs, to wit: Business and Professions Code section 4060, based on Finding 9(B) above.

It was not established that respondent violated Health and Safety Code section 11350, subdivision (a). Said section of the Health and Safety Code makes it a crime to possess a controlled substance or Schedule IV controlled substance, such as Xanax, unless one has a written prescription issued by a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. Complainant did not demonstrate that there is jurisdiction in this administrative proceeding to find or to conclude that a Board licensee has violated and is guilty of a criminal statute.

4. Grounds exist to direct respondent to pay the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, in that respondent violated the Pharmacy Law, based on Conclusions of Law 2 – 3 above. The reasonable costs of investigation and enforcement costs in this matter are deemed to be \$3,128 inasmuch as complainant did not establish the first of three causes for discipline.

5. Discussion—Under Business and Professions Code section 4301, subdivision, the Board must take action against the holder of a license who is guilty of unprofessional conduct. Here, on one night three years ago in November 2011, respondent used or drank alcoholic beverages to an extent that was dangerous to himself or others. He tried to argue with police, fell on his face, and the police arrested him for being drunk in public. At the police station, respondent was found to possess the controlled substance Xanax. He did not have a prescription for the drug in violation of a state statute regulating controlled substances and dangerous drugs. He possessed 34 one milligram tablets of Xanax. He had ingested the Xanax at the nightclub or bar and gave tablets of Xanax to his friends.

As a matter of mitigation or rehabilitation, respondent was found eligible for deferred entry of judgment and completed a court drug diversion program by participating in 18 group drug counseling sessions and 20 meetings of Alcoholics or Narcotics Anonymous. His criminal charge was dismissed and he does not have a conviction for drug possession. He does not have a criminal or prior disciplinary record. Moreover, it was not established that respondent was selling Xanax for his

own financial benefit or that he had diverted Xanax from his place of employment. He knew that it was illegal and dangerous to possess and use the controlled substance and to let others use it as well. The clear and convincing weight of the evidence demonstrated that respondent used the drug because he was having personal problems and used and let others use the Xanax for recreational purposes. His use of the drug was a matter of poor judgment and choices and not a matter of drug diversion or addiction. It was not established that respondent is addicted to drugs or has a chemical dependency problem.

Since that fateful evening three years ago, respondent has changed his life and life style and has matured. Not only did he successfully complete the drug diversion program, respondent has stopped using Xanax or any other illegal or recreational drug, does not drink hard liquor, and no longer associates with the same persons with whom he formerly drank and took drugs. He has a young son and is busy caring for and supporting him and the boy's mother. He demonstrated and expressed remorse for his conduct. For the past three years, respondent has worked dutifully and without incident as a pharmacy technician at Hygeia, a long-term care and closed door pharmacy. He obtained an excellent letter of reference from his supervising pharmacist who finds him to be professional, accurate, and helpful.

As a registered pharmacy technician, respondent has access to drugs and medications at his employment and is expected to follow the laws and regulations governing the safekeeping and dispensing of medications and the operation of the pharmacy. The clear and convincing weight of the evidence demonstrated that respondent has reformed himself to a significant degree and is motivated to follow the laws and regulations. The evidence also suggests that respondent has learned from his involvement with the criminal justice system, drug diversion, and this administrative proceeding and will not likely repeat his conduct. Although he did not divert drugs from his employment, the public would be better served if certain terms and conditions of probation appropriate for licensees who have exhibited trouble with drugs and/or alcohol in the past were applied in respondent's case. Although respondent successfully completed the drug diversion program required by the court in his criminal case, the board requires further monitoring to ensure respondent does not encounter any future lapses in judgment when it comes to respondent's use of drugs and alcohol.

Based on the evidence in this matter (Findings 2 -3, 6 - 8, and 10 - 15 above) and considering the Board's Disciplinary Guidelines (Rev. 10/2007), a mid-level form of discipline with revocation stayed and imposition of probation under the standard terms of probation plus an ethics course is appropriate not only to protect the public but also to allow respondent to continue to demonstrate his rehabilitation

ORDER

Pharmacy technician registration number TCH 111189 and registration rights previously issued by the Board of Pharmacy to respondent Jonathan Alvarez are revoked, based on Conclusions of Law 2 and 3 above; provided, however, based on Conclusion of Law 5 above, said order of revocation will be stayed and respondent's license shall be placed on probation for four (4) years under 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 premises licensed by the Board, if applicable, in which he holds an interest at the time this Decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws—Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;

- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

6. Notice to Employers—During the period of probation, respondent shall notify all present and prospective employers of the Decision in Case Number 4556 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 4556 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in charge and owner

at every pharmacy of the terms and conditions of the Decision in Case Number 4556 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request. Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the Decision in Case Number 455 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

7. Reimbursement of Board Costs—As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$3,128. Respondent shall make said payments as follows: \$69.51 per month for 45 months. 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 by the Board or its designee shall be considered a violation of probation.

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

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

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

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions

thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation—Following the effective date of this Decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board. Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address, or Employment—Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation—Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 70 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 70 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 70 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 70 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. Ethics Course—Respondent shall complete a course in Ethics, which must be first approved by the Board. Respondent shall submit proof of completion of this course to the Board no later than 12 months after the start of probation. Respondent is responsible for paying all costs associated with fulfilling this term and condition 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.

16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups – Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

17. 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.

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

supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

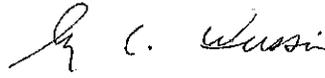
19. Prescription Coordination and Monitoring of Prescription Use – Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of controlled substances, and/or dangerous drugs, and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances, or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's Accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment. The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

20. Criminal Probation/Parole Reports – Respondent shall provide a copy of the conditions of any criminal probation/parole to the board, in writing, within ten (10) days of the issuance or modification of those conditions. Respondent shall provide the name of his or her probation/parole officer to the board, in writing, within ten (10) days after that officer is designated or a replacement for that officer is designated. Respondent shall provide a copy of all criminal probation/parole reports to the board within ten (10) days after respondent receives a copy of such report. Failure to timely make any of the submissions required hereby shall be considered a violation of probation.

This Decision shall become effective on March 16, 2015.

IT IS SO ORDERED this 13th day of February, 2015.



By _____

STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

JONATHAN ALVAREZ
7574 Hellman Avenue
Rosemead, CA 91770
Pharmacy Technician Registration
No. TCH 111189

Case No. 4556

OAH No. 2014060209

Respondent.

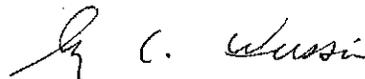
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

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 December 1, 2014. 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 January 19, 2015. **No new evidence may be submitted.**

IT IS SO ORDERD this 19th day of December 2014.



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

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

In the Matter of the Accusation
Against:

JONATHAN ALVAREZ
7574 Hellman Avenue
Rosemead, CA 91770

Pharmacy Technician Registration No.
TCH 111189

Respondent.

Case No. 4556

OAH No. 2014060209

**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:

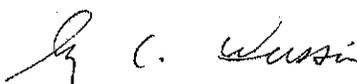
- (1) That reconsideration be, and is, hereby granted, said reconsideration to be solely on whether to reject the Proposed Decision and Disciplinary Order.
- (2) That the parties will be notified of the date for submission of any written argument they may wish to submit when the transcript of the above-mentioned hearing becomes available; and;
- (3) The Decision of the Board in this matter issued on November 12, 2014, 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 1st day of December 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

Case No. 4556

JONATHAN ALVAREZ
7574 Hellman Avenue
Rosemead, CA 91770

OAH No. 2014060209

Pharmacy Technician Registration No.
TCH 111189

Respondent.

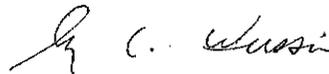
DECISION AND ORDER

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 December 12, 2014.

It is so ORDERED on November 12, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

In the Matter of the Accusation
Against:

JONATHAN ALVAREZ,
Pharmacy Technician Registration
No. TCH-111189,

Respondent.

Case No. 4556

OAH No. 2014060209

PROPOSED DECISION

On September 19, 2014, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles. Complainant was represented by Heather Hua, Deputy Attorney General. Respondent Jonathan Alvarez was present and represented himself.

At the conclusion of the hearing, the Administrative Law Judge requested that complainant's counsel file a brief on the issue whether a deferred entry of judgment followed by completion of a drug program and dismissal of the criminal charges constituted a criminal conviction. On September 24, 2014, the Deputy Attorney General timely filed a Closing Brief, which was marked as Exhibit 9.

Oral, documentary, and stipulated evidence having been received, the Administrative Law Judge submitted this matter for decision on September 24, 2014, and finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on February 4, 2014, Accusation, Case Number 4556, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On or about February 28, 2011, the Board issued pharmacy technician registration number TCH-111189 to Jonathan G. Alvarez (respondent). Said registration was in full force and effect at all times relevant herein and expires on

March 31, 2016, unless renewed. Respondent does not have a prior disciplinary history with the Board.

3. Respondent completed the eight-month curriculum and educational requirements for issuance of a pharmacy technician registration at Everest College in 2011. After obtaining his pharmacy technician registration from the Board, he became employment as a full-time pharmacy technician at Hygeia, a long-term care and closed-door pharmacy.

Respondent's Criminal Case

4. (A) On March 13, 2012, before the Superior Court of California, County of Los Angeles, in *People v. Jonathan Alvarez*, Case No. 1CA17510, respondent pleaded nolo contendere to a violation of Health and Safety Code section 11375, subdivision (b)(2) (possession of a controlled substance for sale), a misdemeanor. The court adjudged respondent to be guilty and found a factual basis for his plea but placed him on deferred entry of judgment for 18 months pending his completion of a drug diversion program pursuant to Penal Code sections 1000 and 1000.2.¹

(B) On March 13, 2013, the court ordered respondent, in pertinent part, not to use or possess any narcotics, dangerous or restricted drugs, or associated paraphernalia, except with a valid prescription; participate in a drug abuse education, treatment, or rehabilitation program as directed by a probation officer; enroll in and complete an approved controlled substances treatment program; submit to periodic anti-narcotic tests; pay administrative fees totaling \$250; not own, use, or possess any dangerous or deadly weapons; and obey all laws and orders of the court. Respondent was also ordered to be released to an authorized representative of the controlled substance treatment program and to comply with all of the terms and conditions of the program. If he left or was discharged from the treatment program for any reason, respondent was ordered to report to court on the next day.

5. (A) As established by the arrest report of the Los Angeles Police Department (LAPD) and respondent's testimony, in the evening of November 4, 2011, respondent and his friend Jay Bello went to a bar or night club. Bello drove the two of them there in his car. Respondent brought with him a small plastic baggie containing an undetermined number of one milligram tablets of Xanax, a controlled

¹ The court docket (Exh. 5) states that the disposition of the case was deferred entry of judgment and that respondent waived time for entry of judgment pursuant to Penal Code section 1000.2. The court docket also described respondent's custody after his March 13, 2012 court appearance as "on diversion."

substance.² Respondent testified that he obtained the Xanax from a neighborhood friend who might have had a prescription. At the nightclub or bar, respondent and Bello drank alcoholic beverages, including Vodka, and ingested Xanax. Respondent also gave Xanax tablets to his friends so that they would have a good time. Both respondent and his friend Bello became intoxicated from alcohol.

(B) Sometime before 3:00 a.m., on November 5, 2011, respondent and Bello left the bar or nightclub. Bello drove. He collided with another vehicle, causing minor damage to the front end of his car. The driver of other vehicle called the police. At approximately 3:00 a.m., LAPD officers were dispatched to what was reported as an alcohol-related traffic collision. At the scene of the accident, the officers found respondent and Bello standing or sitting outside of Bello's car. The officers contacted the driver of the other vehicle who stated that Bello had hit his car. Bello admitted to the officers that he had been driving. Respondent, who was sitting on the curb, began yelling at the officers. He stood up and began walking to the officers. He then fell face-down in the street. Bello told the officers that respondent was drunk.

(C) The police officers determined that Bello displayed the physical signs of intoxication. Bello said he had drunk four beers. The officers found three empty bottles of beer in Bello's vehicle. When the officers looked inside Bello's car, respondent began yelling at them again. He stumbled while walking in the street. The officers determined respondent was also intoxicated and was unable to care for himself. Respondent was arrested for being drunk in public. Next, the officers had Bello perform field sobriety tests which he was unable to do complete. Thereupon, the officers arrested Bello for driving while under the influence of an alcoholic beverage.

(D) At the police station, Bello underwent a breath test which revealed that his blood alcohol content was 0.08 percent, which was above the legal limit. During a book search of respondent, one of the arresting officers found the small plastic baggie with 34 pills inside respondent's sock. When asked about the pills, respondent told the officers that the pills were Xanax. He stated he did not want to say anything more about the pills or say where he got the pills. After the officer indicated that he knew respondent worked as a pharmacy technician at a pharmacy, respondent stated he received the Xanax from a friend and was not taking all of the Xanax himself but was giving the tablets to friends. Respondent was arrested for being in possession of a controlled substance. It was not established that respondent

² Xanax is a Scheduled IV controlled substance under Health and Safety Code section 11057, subdivision (d)(1), and a dangerous drug under Health and Safety Code section 422. Xanax is a benzodiazepine that is given for the treatment of anxiety, depression, and seizures and causes the side effects of drowsiness and euphoria. As a controlled substance, Xanax requires a triplicate prescription.

had an unusual amount of money or number of bills in his possession when he was booked and searched at the police station.

6. (A) One month after his court appearance, on April 12, 2012, respondent enrolled in the Drug Diversion Program at Didi Hirsch Mental Health Services in Glendale, pursuant to the deferred entry of judgment and Penal Code section 1000. The Drug Diversion Program consisted of one intake session, 18 educational group sessions, one exit session, and 20 12-step meetings.

(B) Five months later, on September 12, 2012, respondent successfully completed all of the requirements of the Drug Diversion Program at Didi Hirsch Mental Health Services. As corroborated by a letter from the substance abuse counselor, respondent attended 18 weekly sessions of group classes in drug education and the 20 meetings of Alcoholics or Narcotics Anonymous. He paid the program fees of \$565 in full.

7. On or before September 13, 2012, respondent paid the fees and fines ordered by the court, which included the \$150 administrative fee and the restitution fine of \$10.

8. On or about September 13, 2012, respondent returned to court for a progress report on his deferred entry of judgment and drug diversion program. Because he had completed the drug diversion program at Didi Hirsch Mental Health Services, the court dismissed the charge of Health and Safety Code section 11375, subdivision (b)(2), and adjudged respondent not guilty of the charge. As a result, respondent was not convicted of the drug possession charge and has no convictions on his record. He does not have a criminal record.

9. (A) Based on Finding 5 above, respondent used alcohol or ingested an alcoholic beverage or beverages to an extent or in a manner as to be dangerous or injurious to himself, another person, or the public.

(B) Based on Finding 5 above, respondent possessed a controlled substance or dangerous drug without having been furnished the controlled substance or dangerous drug upon a prescription by a physician, in violation of Business and Professions Code section 4060.

10. Respondent admits his wrongdoing and demonstrated remorse for his conduct. He acknowledges that, on the night of his arrest, he was intoxicated due to drinking Vodka and that he illegally possessed one-milligram tablets of Xanax. He admits that he ingested Xanax and gave one-milligram tablets of Xanax to his friends at the bar or nightclub. He is not sure how many tablets that he gave away due to being intoxicated. Respondent ingested the Xanax because he was having financial and family difficulties at the time and used the drug to escape his troubles. He recognizes that it was dangerous to take and allow his friends to take Xanax.

11. Respondent works as a pharmacy technician at Hygeia where he has access to controlled substances. However, it was not shown that respondent diverted the Xanax that he possessed on the night of his arrest from his employer or stole or took the controlled substance from any other source. As established by his testimony, respondent told his supervising pharmacist at Hygeia about his arrest. The Administrative Law Judge takes official notice that the Board's internet website contains public information about the issuance and details of the pending Accusation in this matter.

12. Respondent obtained a letter of reference from his employment at Hygeia. Peggy Lu, Pharm.D., is a licensed pharmacist at Hygeia and has supervised respondent for the past three years. Lu lauds respondent's professionalism, dedication, and attitude. As established by Lu's letter (Exh. A), respondent often volunteers for additional duties at the pharmacy, such as answering telephone calls, organizing and cleaning work spaces, and helping to manage the inventory. Lu indicates respondent is a "quick learner" and has a "team player mind-set." He is able to work with minimal supervision, is accurate, and gives his attention to details of his job. He learned to process prescriptions that were initially unfamiliar to him and attends optional professional development classes offered by the pharmacy. Respondent trains new hires or new pharmacy technicians so that they can accurately prepare and fill prescriptions. Lu regularly receives praise from pharmacy colleagues about respondent's work and she ranks him as one of the best pharmacy technicians at Hygeia.

13. Respondent no longer takes Xanax or any illegal drug. He has not taken drugs for the past 18 months. He does not drink Vodka or any other "hard liquor". Respondent drinks beer on occasion at family gatherings. After completing the drug education program in September 2012, respondent continued to attend a few AA meetings but relies mainly on his family to keep him busy and sober.

14. Respondent is now 24 years old. He and his girlfriend have a two-year-old son and live together as a family in Rosemead. His girlfriend works in purchasing and delivery for a paint company. Since the birth of his son in September 2012, respondent has been busy caring for him. He completed the drug diversion program and stopped using illegal drugs and drinking to excess. He does not associate with the same people with whom he went drinking and partying before.

15. Respondent hopes to be able to retain his pharmacy technician registration so that he can support his family. He has been financially responsible by paying his student loan, car payment, and household expenses and wants to continue doing so. Respondent was a credible witness.

16. As established by the testimony of Sejal Raman Desai, B.S., Pharm.D., a licensed pharmacist and an inspector for the Board, a registered pharmacy technician is authorized to work in different pharmaceutical settings, including retail,

hospital, home health care, skilled nursing facility, closed door pharmacy, pharmacy benefit management office, and compounding pharmacy. In these settings, the duties of a registered pharmacy technician may include ordering, stocking, and dispensing or delivering medications, calling physicians for refills of medications, taking and filling prescriptions, and making and packaging medications. A registered pharmacy technician must be supervised by a licensed pharmacist who is responsible for the actions of the pharmacy technician. The supervising pharmacist cannot necessarily guarantee that a pharmacy technician will not take, dilute, or divert medications. A registered pharmacy technician is expected to perform his or her duties in an honest and truthful manner and to obey all applicable laws.

17. The costs of investigation and enforcement of this matter totaled \$4,692, as set forth in the Certification of Prosecution Costs (Exh. 3).

* * * * *

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

1. Grounds do not exist to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 4301, subdivision (I), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that it was not established that respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician, based on Findings 4 – 8 above.

Penal Code section 1000.1, subdivision (d), provides that a plea of guilty pursuant to the deferred entry of judgment statutes or program shall not constitute a conviction for any purpose unless a judgment of guilty is entered pursuant to section 1000.3. Penal Code section 1000.3 provides that, if defendant has performed satisfactorily during the period in which deferred entry of judgment was granted, at the end of that period, the criminal charge or charges shall be dismissed.

In her Closing Brief, complainant's counsel conceded that the First Cause for Discipline for conviction of a crime should be withdrawn provided that respondent showed evidence that he completed the deferred entry of judgment program. Here, respondent pleaded guilty to possession of a controlled substance for sale and was placed on the deferred entry of judgment for 18 months pending his completion of a drug diversion program. He then successfully completed the drug diversion program at Didi Hirsch Mental Health and he testified credibly that the

court thereafter dismissed the criminal charge and adjudged him not guilty. Accordingly, respondent completed the deferred entry of judgment program and was not convicted of any crime.

2. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h), in that respondent used alcoholic beverages to an extent or in a manner as to be dangerous or injurious to himself, another person, or the public, based on Finding 9(A) above. Respondent drank alcoholic beverages at a bar or nightclub, became intoxicated, and tried to get into arguments with a police officer after his friend got into an automobile accident.

3. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (j), in that respondent violated a statute of this state regulating controlled substances and dangerous drugs, to wit: Business and Professions Code section 4060, based on Finding 9(B) above.

It was not established that respondent violated Health and Safety Code section 11350, subdivision (a). Said section of the Health and Safety Code makes it a crime to possess a controlled substance or Schedule IV controlled substance, such as Xanax, unless one has a written prescription issued by a physician, dentist, podiatrist, or veterinarian licensed to practice in this state. Complainant did not demonstrate that there is jurisdiction in this administrative proceeding to find or to conclude that a Board licensee has violated and is guilty of a criminal statute.

4. Grounds exist to direct respondent to pay the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, in that respondent violated the Pharmacy Law, based on Conclusions of Law 2 – 3 above. The reasonable costs of investigation and enforcement costs in this matter are deemed to be \$3,128 inasmuch as complainant did not establish the first of three causes for discipline.

5. Discussion—Under Business and Professions Code section 4301, subdivision, the Board must take action against the holder of a license who is guilty of unprofessional conduct. Here, on one night three years ago in November 2011, respondent used or drank alcoholic beverages to an extent that was dangerous to himself or others. He tried to argue with police, fell on his face, and the police arrested him for being drunk in public. At the police station, respondent was found to possess the controlled substance Xanax. He did not have a prescription for the drug in violation of a state statute regulating controlled substances and dangerous drugs. He possessed 34 one milligram tablets of Xanax. He had ingested the Xanax at the nightclub or bar and gave tablets of Xanax to his friends.

As a matter of mitigation or rehabilitation, respondent was found eligible for deferred entry of judgment and completed a court drug diversion program by participating in 18 group drug counseling sessions and 20 meetings of Alcoholics or Narcotics Anonymous. His criminal charge was dismissed and he does not have a conviction for drug possession. He does not have a criminal or prior disciplinary record. Moreover, it was not established that respondent was selling Xanax for his own financial benefit or that he had diverted Xanax from his place of employment. He knew that it was illegal and dangerous to possess and use the controlled substance and to let others use it as well. The clear and convincing weight of the evidence demonstrated that respondent used the drug because he was having personal problems and used and let others use the Xanax for recreational purposes. His use of the drug was a matter of poor judgment and choices and not a matter of drug diversion or addiction. It was not established that respondent is addicted to drugs or has a chemical dependency problem.

Since that fateful evening three years ago, respondent has changed his life and life style and has matured. Not only did he successfully complete the drug diversion program, respondent has stopped using Xanax or any other illegal or recreational drug, does not drink hard liquor, and no longer associates with the same persons with whom he formerly drank and took drugs. He has a young son and is busy caring for and supporting him and the boy's mother. He demonstrated and expressed remorse for his conduct. For the past three years, respondent has worked dutifully and without incident as a pharmacy technician at Hygeia, a long-term care and closed door pharmacy. He obtained an excellent letter of reference from his supervising pharmacist who finds him to be professional, accurate, and helpful.

As a registered pharmacy technician, respondent has access to drugs and medications at his employment and is expected to follow the laws and regulations governing the safekeeping and dispensing of medications and the operation of the pharmacy. The clear and convincing weight of the evidence demonstrated that respondent has reformed himself to a significant degree and is motivated to follow the laws and regulations. The evidence also suggests that respondent has learned from his involvement with the criminal justice system, drug diversion, and this administrative proceeding and will not likely repeat his conduct. He did not divert drugs from his employment and does not have a chemical dependency problem. Perhaps the best evidence and predictor of respondent's future conduct and prospects for success as a Board licensee are his excellent record of employment at Hygeia for the past three years and the changes that he made in his life.

Based on the evidence in this matter (Findings 2 -3, 6 - 8, and 10 - 15 above) and considering the Board's Disciplinary Guidelines (Rev. 10/2007), a mid-level form of discipline with revocation stayed and imposition of probation under the standard terms of probation plus an ethics course is appropriate not only to protect the public but also to allow respondent to continue to demonstrate his rehabilitation. The optional conditions related to chemical dependency are not appropriate inasmuch as it

was not shown that respondent has a chemical dependency problem or a drug addiction.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Pharmacy technician registration number TCH-11118 and registration rights previously issued by the Board of Pharmacy to respondent Jonathan Alvarez are revoked, based on Conclusions of Law 2 and 3 above; provided, however, based on Conclusion of Law 5 above, said order of revocation will be stayed and respondent's license shall be placed on probation for four (4) years under 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 premises licensed by the Board, if applicable, in which he holds an interest at the time this Decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws—Respondent shall obey all state and federal laws and regulations. Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

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

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

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

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

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

6. Notice to Employers—During the period of probation, respondent shall notify all present and prospective employers of the Decision in Case Number 4556 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 4556 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Decision in Case Number 455 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request. Furthermore, within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the Decision in Case Number 455 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

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

7. Reimbursement of Board Costs—As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$3,128. Respondent shall make said payments as follows: \$69.51 per month for 45 months. 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 by the Board or its designee shall be considered a violation of probation.

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

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

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

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

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

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

11. Notification of a Change in Name, Residence Address, Mailing Address, or Employment—Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation—Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 70 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 70 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 70 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 70 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.

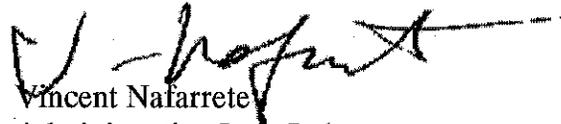
14. Ethics Course—Respondent shall complete a course in Ethics, which must be first approved by the Board. Respondent shall submit proof of completion of this course to the Board no later than 12 months after the start of probation. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

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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: October 21, 2014



Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **JONATHAN ALVAREZ**
2618 W. Ave 34
Los Angeles, CA 90065
14 Pharmacy Technician Registration
No. TCH 111189

Case No. 4556

ACCUSATION

15 Respondent.

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 28, 2011, the Board of Pharmacy issued Pharmacy Technician
21 Registration No. TCH 111189 to Jonathan Alvarez (Respondent). The Pharmacy Technician
22 Registration was in full force and effect at all times relevant to the charges brought herein and
23 will expire on March 31, 2014, unless renewed.

24 **JURISDICTION**

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

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

3 8. Section 4300.1 states:

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

9 9. Section 4301 states, in pertinent part:

10 "The board shall take action against any holder of a license who is guilty of unprofessional
11 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
12 Unprofessional conduct shall include, but is not limited to, any of the following:

13

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

19

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

22

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
26 substances or of a violation of the statutes of this state regulating controlled substances or
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

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

12 10. Health and Safety Code Section 11350, subdivision (a) makes it a crime in this
13 state to possess any controlled substance, unless upon the written prescription of a physician or
14 other authorized prescriber.

15 REGULATORY PROVISIONS

16 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:
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 12. Section 125.3 states, in pertinent part, that the Board may request the administrative
25 law judge to direct a licentiate found to have committed a violation or violations of the licensing
26 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
27 case.
28

1 selling them or using them himself, Respondent stated, "No I would over dose if I took them all.
2 I pass them out, I distribute them to friends. I don't sell them. Look I know I got busted, sorry."

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Dangerous Use of Alcohol)**

5 15. Respondent is subject to disciplinary action under section 4301, subdivision (h), in
6 that on or about November 5, 2011, Respondent used alcoholic beverages to an extent or in a
7 manner as to be dangerous or injurious to himself, another person or to the public. Complainant
8 refers to, and by this reference incorporates, the allegations set forth above in paragraph 14, as
9 though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Illegal Possession of Controlled Substances)**

12 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) for
13 violating section 4060 and Health and Safety Code section 11350, subdivision (a), in that on or
14 about November 5, 2011, Respondent was found to be in illegal possession of a controlled
15 substance. Complainant refers to, and by this reference incorporates, the allegations set forth
16 above in paragraph 14, as though set forth fully.

17 **PRAYER**

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

20 1. Revoking or suspending Pharmacy Technician Registration No. TCH 111189, issued
21 to Jonathan Alvarez;

22 2. Ordering Jonathan Alvarez to pay the Board the reasonable costs of the investigation
23 and enforcement of this case, pursuant to section 125.3; and

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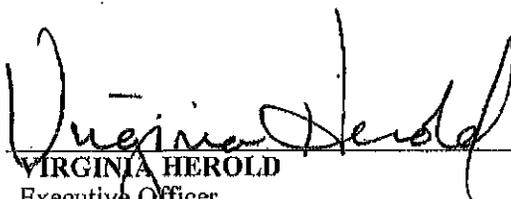
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3. Taking such other and further action as deemed necessary and proper.

DATED: 2/4/14



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

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