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

In the Matter of the Accusation Against: **NEIVA NERIEDA RANGEL** 990 Margarita Dr., #104 Corona, CA 92879 Pharmacy Technician Registration No. TCH 99226 Respondent.	Case No. 4601 OAH No. 2013090832

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 March 27, 2014.

It is so ORDERED on February 25, 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: NEIVA NERIEDA RANGEL, Respondent.	Case No. 4601 OAH No. 2013090832

PROPOSED DECISION

This matter came on regularly for hearing on December 6, 2013, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Diego, California.

Deputy Attorney General Karen L. Gordon represented complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (board).

Neiva Nerieda Rangel (respondent) represented herself.

The matter was submitted on December 6, 2013.

FACTUAL FINDINGS

1. On February 26, 2010, the board issued respondent Original Pharmacy Technician Registration Number TCH 99226. At all relevant times, respondent's license was in full force and effect and will expire on November 30, 2015[1], unless renewed.

2. On July 22, 2013, the Accusation was signed by Virginia Herold, in her official capacity as the Executive Officer of the board. The Accusation and other required jurisdictional documents were served on respondent on August 8, 2013.

The Accusation sought to revoke or suspend respondent's pharmacy technician registration based on her convictions for disturbing the peace (first cause for discipline), for

[1] The Accusation alleges that respondent's license will expire on November 30, 2013; however, the License History Certification introduced at hearing indicated the license is in full force and effect until 2015.

driving under the influence of alcohol (second and third causes for discipline), for using alcoholic beverages in a manner dangerous to herself or the public (fourth cause of action) and for having sustained multiple alcohol related convictions (fifth cause of action). The Accusation also sought the recovery of reasonable costs pursuant to Business and Professions Code section 125.3.

3. On September 3, 2013, respondent submitted her Notice of Defense, and this hearing was set.

2012 Conviction for Disturbing the Peace on October 9, 2011

4. On October 9, 2011, Corona Police were dispatched to respondent's apartment to investigate a complaint that a loud party was being held at the apartment.[2] When officers arrived at the home they heard loud music and people laughing. Respondent opened the front door, and the police observed beer cans strewn around the apartment and smelled a strong odor of marijuana. Police told respondent that they received complaints about the noise from a neighbor and that respondent needed to end the party. Respondent stated that she would take care of the situation and tried to slam the door on the officer. The officer stopped the door from slamming and requested respondent to step outside and talk to him. Respondent and other individuals argued with the officer, and respondent refused to end the party. Respondent was cited for disturbing the peace.

5. On February 14, 2012, in the Riverside County Superior Court, case number RIM1200152, respondent pled guilty to, and was convicted of, a misdemeanor count of disturbing the peace in violation of Penal Code section 415, subdivision (2). In exchange for her plea, respondent was placed on one year of informal probation with certain terms and conditions, including that she pay fines and fees in the amount of $500.00.

On September 7, 2012, the Superior Court found that respondent violated the terms of her probation. The court reinstated respondent's probation and ordered respondent to perform 64 hours of community service and serve 30 days in custody in the sheriff's labor program. The time in custody was to run consecutively with time in custody ordered in case number RIM 1211788, a subsequent case in which respondent sustained a criminal conviction.

On January 14, 2013, the Superior Court found that respondent again violated the terms of her probation and ordered respondent to serve an additional fifteen days in custody; the requirement that respondent perform 64 hours of community service was stayed until March 14, 2013.

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[2] The arresting officers' reports were received under *Lake v. Reed* (1997) 16 Cal. 4th 448.

2012 Conviction for Driving Under the Influence of Alcohol on March 9, 2012.

6. On March 9, 2012, California Highway Patrol officers were dispatched to investigate a report of a person driving the wrong way on Route 91 in Buena Park, California. The officers observed respondent's vehicle stopped in the center divider facing in the wrong direction. The officers initiated a traffic break. Respondent activated her vehicle's hazard lights, made a u-turn, and exited the freeway. The officers signaled respondent to pull over after she exited the freeway.

When the officers approached respondent, they "immediately" smelled alcohol coming from within the vehicle. The officers observed respondent fumble for her driver's license, and she initially handed the officer a Disneyland card before she realized that it was not her driver's license. Respondent denied she was driving on the wrong side of the freeway; she asserted that she was lost and that her car spun out and stopped in the opposite direction of travel. Respondent admitted that she drank "two Mike's Hard Lemonades" before driving. She failed the field sobriety tests administered by the officers. Breath tests were administered on the scene, and respondent's blood alcohol content measured 0.19 and 0.18 per cent.

7. On April 9, 2013, in Orange County Superior Court, case number 12NM03672 MA, respondent pled guilty to, and was convicted of, one misdemeanor count of driving under the influence of alcohol or drugs in violation of Vehicle Code section 23152, subdivision (a), and one misdemeanor count of driving with a blood alcohol level in excess of .08 per cent in violation of Vehicle Code section 23152, subdivision (b). In her guilty plea form, respondent admitted that "[o]n 3/9/12 in Orange County, CA, I willfully and unlawfully drove a motor vehicle upon a highway while under the influence of alcohol or drugs and with a blood alcohol concentration of 0.08 % or more, to wit, 0.18 %." The Superior Court placed respondent on three years informal probation on specified terms and conditions, including the requirements that she pay fines and fees in the amount of $807.00, attend a MADD Victim Impact Panel, complete a six month First Offender Program, and serve one day in custody, with credit for one day served. The Department of Motor Vehicles suspended respondent's driver's license.

On August 1, 2012, the Superior Court found that respondent violated the terms of her probation by failing to pay the fines and fees she was ordered to pay as a condition of probation. Respondent's probation was revoked, and a probation violation warrant was issued for her arrest.

2012 Conviction for Driving Under the Influence of Alcohol on June 30, 2012.

8. On June 30, 2012, a Department of Parks and Recreation police officer on routine patrol duty stopped respondent's vehicle after he observed her improperly exiting a parking lot through an entrance driveway and executing an unlawful u-turn. When the officer approached respondent, he smelled a strong odor of alcohol emanating from the vehicle. Respondent admitted drinking "two Mike's Hard Lemonades." Respondent failed

the field sobriety tests administered by the officer. Breath tests were administered on the scene, and respondent's blood alcohol content measured 0.24, 0.21 and 0.21 per cent.

9 On September 7, 2012, in Riverside County Superior Court, case number RIM1211788, respondent pled guilty to, and was convicted of, one misdemeanor count of driving with a blood alcohol level in excess of .08 per cent in violation of Vehicle Code section 23152, subdivision (b), and one misdemeanor count of driving on a suspended license in violation of Vehicle Code section 14601.2, subdivision (a). The Superior Court found true the special allegation that respondent was convicted of driving under the influence within the previous 10 years and that her the blood alcohol level was in excess of 0.15. The court placed respondent on four years informal probation on specified terms and conditions, including the requirements that she pay fines and fees in the amount of $2,044.00, complete an eighteen month Drinking Driver Program, and serve fifty days in custody, with credit for four days served. Respondent's probation will terminate in September 2016.

Expert Testimony

10. Dr. Brandon K. Mutrux holds a Doctorate of Pharmacy and has been registered with the California Board of Pharmacy since 2008. He is currently employed with the Board of Pharmacy as a Pharmacy Inspector.

Dr. Mutrux testified that licensed pharmacy technicians work under the supervision of a registered pharmacist and have the authority to fill prescriptions, order stock, bill insurance carriers, and answer patients' basic questions. Pharmacy technicians must possess the characteristics of honesty and integrity and be able to perform competently in a stressful work environment. Mistakes made by pharmacy technicians can have serious, significant consequences to patients, including death. Pharmacy technicians who abuse substances are particularly dangerous to the public and to themselves because they have easy access to drugs and dangerous devices, and they may attempt to perform their job duties while they are impaired. Dr. Mutrux opined that respondent's repeated offenses indicate that she did not learn from her prior mistakes and that her alcohol abuse was continuing.

Costs

11. A Certification of Prosecution Costs pursuant to Business and Professions Code section 125.3 was filed on behalf of the board. The certification sought recovery of costs of the investigation and prosecution of the instant matter in the amount of $1,992.50. Those costs are reasonable.

Evidence in Mitigation and of Rehabilitation

12. Respondent is 25 years old. She studied to be a pharmacy technician at the American Career College. As a part of her curriculum, she was an extern at CVS Pharmacy for 6 weeks where she filled prescriptions, ordered supplies and shadowed a pharmacist to learn about the pharmacy; she worked 8 hours a day without pay. She received her certification as a pharmacy technician in 2010, after she completed the externship.

In December 2010, respondent obtained a full-time temporary position at Riverside County Region Medical Center. The Medical Center retained respondent as a temporary employee for an additional six months after her first six months of employment. Respondent was laid off from that position in December 2011.

13. Respondent admitted the conduct alleged in the Accusation and apologized for her conduct. She testified that she understood the consequences that stemmed from her acts and that she was a risk to herself and others when she drove after drinking. She stated that she "thanked god" that she did not hurt an innocent person while driving under the influence of alcohol.

Respondent said that she loved being a pharmacy technician; it was the first time that she accomplished something on her own. Respondent did not use alcohol when she was working as a pharmacy technician because she worked hard and did not have time to go out and drink. When respondent lost her pharmacy technician job she thought it was fun to go out and drink, but then it got out of hand. Respondent realized that she should have known she had a problem after her first arrest but that it took time for her to acknowledge it. Respondent testified that she can't, and does not want to, erase what she did because, through it, she can be a living testimonial that individuals can be given a second chance to get better.

14. Respondent currently lives in Victory Outreach, a Christian-based residential recovery facility. Respondent was accepted into Victory Outreach on October 6, 2013; the program is a year-long, no-cost, substance abuse program. Respondent testified that she tried out-patient counseling but that it was not enough to keep her away from alcohol. Respondent expressed her gratitude to Victory Outreach for accepting her into their program. At Victory Outreach, respondent is working on becoming a better person so that she can return to her family. Respondent voluntarily entered the Victory Outreach program; it was not a court requirement. Victory Outreach gave respondent special permission to attend the administrative hearing.

15. Respondent gave her sobriety date as October 4, 2013. At the time of the hearing, she was on her 63rd day of sobriety. Respondent acknowledged that she failed to complete the requirements of probation imposed in her criminal cases, including not performing the required community service hours or the drinking driver program. Respondent testified that she did not have the financial ability to pay the enrollment and other fees necessary to enroll in the required classes.

16. Respondent does not have the ability to pay costs requested by the board for the investigation and prosecution of this matter. Respondent is sent to job sites under the supervision of Victory Outreach, but all of the money she earns is given to the program.

17. In a letter dated December 3, 2013, Francisca Flores (Flores), Home Director, Victory Outreach Recovery Home, wrote to confirm that respondent was accepted into their recovery program on October 6, 2013, and was expected to stay until October 6, 2014. Flores stated that she hoped that when respondent completed the program "she will be equipped and ready to return to her former occupation."

LEGAL CONCLUSIONS

Disciplinary Guidelines

1. The Board of Pharmacy Disciplinary Guidelines, October 2007 (Guidelines), provide that the board "serves the public by: protecting health, safety, and welfare of the people of California with integrity and honesty."

2. The Guidelines provide that the following factors should be considered when determining the level of discipline to be imposed in a disciplinary case:

1. actual or potential harm to the public
2. actual or potential harm to any consumer
3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

3. The Guidelines provide that a respondent may submit evidence to demonstrate his or her rehabilitative efforts and competency, including the following:

a. Recent, dated written statements and/or performance evaluations from persons in positions of authority who have on-the-job knowledge of the respondent's current competence in the practice of pharmacy including the period of time and capacity in which the person worked

with the respondent. Such reports must be signed under penalty of perjury and will be subject to verification by board staff.

b. Recent, dated letters from counselors regarding the respondent's participation in a rehabilitation or recovery program, which should include at least a description and requirements of the program, a psychologist's diagnosis of the condition and current state of recovery, and the psychologist's basis for determining rehabilitation. Such letters and reports will be subject to verification by board staff.

c. Recent, dated letters describing the respondent's participation in support groups, (e.g., Alcoholics Anonymous, Narcotics Anonymous, professional support groups, etc.). Such letters and reports will be subject to verification by board staff.

d. Recent, dated laboratory analyses or drug screen reports, confirming abstention from drugs and alcohol. Such analyses and reports will be subject to verification by board staff.

e. Recent, dated physical examination or assessment report by a licensed physician, confirming the absence of any physical impairment that would prohibit the respondent from practicing safely. Such assessments and reports will be subject to verification by board staff.

f. Recent, dated letters from probation or parole officers regarding the respondent's participation in and/or compliance with terms and conditions of probation or parole, which should include at least a description of the terms and conditions, and the officer's basis for determining compliance. Such letters and reports will be subject to verification by board staff.

Applicable Statutory and Regulatory Provisions

4. Business and Professions Code section 482, requires the board to "develop criteria to evaluate the rehabilitation of a person when . . . (b) considering suspension or revocation of a license under Section 490." Section 482 also requires the Board to "take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

5. Business and Professions Code section 490, subdivision (a), provides that the board "may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued."

6. Business and professions Code section 493 provides in relevant part, that in a proceeding to revoke or suspend a license

> upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

7. Business and professions Code section 4301, provides, in part, that the "board shall take action against any holder of a license who is guilty of unprofessional conduct . . . ." Unprofessional conduct includes, but is not limited to

> (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
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> [¶] . . . [¶]
>
> (k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
>
> (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of . . . a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving

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

8. California Code of Regulations, title 16, section 1769, subdivision (b), provides:

When considering the suspension or revocation of a . . . personal license on the ground that the licensee has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

Evaluation

10. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), because on February 14, 2012, she was convicted of the crime of disturbing the peace and she was subsequently found to be in violation of probation.

11. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), because on April 9, 2012, respondent was convicted of the crime of driving under the influence of alcohol or drugs and having a blood alcohol content in excess of the legal limit.

12. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), because on September 7, 2012, respondent was convicted of the crimes of driving under the influence of alcohol or drugs, having a blood alcohol content in excess of the legal limit and driving on a suspended license.

13. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (h), because on March 9, 2012, and June 30, 2012, respondent operated a motor vehicle while she was substantially impaired by alcohol.

14. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (k), because respondent was convicted of two misdemeanor counts of driving under the influence of alcohol or drugs.

15. Cause exists to discipline respondent's Pharmacy Technician Registration Number TCH 99226 pursuant to Business and Professions Code sections 490 and 4301, subdivision (k), because respondent was convicted of three misdemeanor counts of driving under the influence of alcohol or drugs.

16. Pharmacy Technicians occupy positions that require trustworthiness, honesty, clear-headedness and the exercise of impeccable judgment, particularly as a technician has access to confidential personal and financial information of consumers and to highly regulated medications and devices. The absence of these essential characteristics can result in a significant threat to the public health, safety and welfare. The entirety of the circumstances surrounding the commission of the crime for which respondent was convicted, and her subsequent failure to comply with the terms of her probation, show that the convictions are substantially related to the qualifications, functions and duties of a Pharmacy Technician. (Cal. Code Regs., tit. 16, § 1770.)

Discipline Determination

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

18. The determination of whether respondent's license should be revoked or suspended includes evaluation of the rehabilitation criteria set forth in California Code of Regulations, title 16, section 1769, subdivision (b). Additionally, the board's Guidelines have been considered in reaching the determination of the appropriate level of discipline.

Respondent's recent history of criminal violations and convictions demonstrates that she is currently unable to demonstrate that she can conform her behavior to societal norms. Respondent remains on probation under the control and supervision of the court and will be under its control until at least 2016. However, the evidence revealed that even being on probation was not effective in motivating respondent to cease violating the law.

Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

Respondent is commended for acknowledging her alcohol dependency and taking meaningful steps towards rehabilitation by enrolling in the Victory Outreach program and committing to a one-year stay in the residential facility. Respondent appeared sincere in her remorse for her actions and in her resolve to remain sober. However, respondent cannot demonstrate sustained rehabilitative conduct over an extended period of time as she sustained her last conviction in September 2012; she will be on probation until 2016; and, at the time of the hearing, she had only 63 days of sobriety.

19. On consideration of the entirety of the facts and the application of the disciplinary criteria, protection of the public can be achieved only if respondent's license is revoked. Granting respondent a probationary license, with or without a period of suspension, would not adequately protect the public.

Cost Recovery

20. Complainant is seeking recovery of the reasonable costs of investigation and prosecution of the instant matter in the amount of $1,992.50. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is similar to Bus. & Prof. Code, § 125.3) did not violate due process. But, it was

incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/[her] position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

Respondent failed to achieve a reduction in the severity of the discipline sought to be imposed, but she presented a colorable challenge to the proposed discipline in that she had made strides towards rehabilitation. More significantly, respondent proved by competent evidence that she was unable to pay the costs requested by the board. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is not appropriate to require respondent to pay the costs to investigate and enforce the accusation against her.

ORDER

Respondent's Pharmacy Technician Registration Number TCH 99226 is revoked.

Respondent shall relinquish her technician registration to the board within ten (10) days of the effective date of this decision. Respondent may not reapply or petition the board for reinstatement of her revoked technician registration for three (3) years from the effective date of this decision.

A condition of reinstatement shall be that the respondent is certified as defined in Business and Professions Code section 4202(a) (4) and provides satisfactory proof of certification to the board.

DATED: January 23, 2014

SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against: **NEIVA NEREIDA RANGEL** **990 Margarita Drive, A104** **Corona, CA 92879** **Pharmacy Technician Registration** **No. TCH 99226** Respondent.	Case No. 4601 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about February 26, 2010, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 99226 to Neiva Nereida Rangel (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

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JURISDICTION

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

4. Section 4300, subdivsion (a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

6. Section 482 of the Code states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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> (a) Considering the denial of a license by the board under Section 480; or
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> (b) Considering suspension or revocation of a license under Section 490.
>
> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

8. Section 493 of the Code states:

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

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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

. . . .

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

. . . .

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

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

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REGULATORY PROVISIONS

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

. . . .

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

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COSTS

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(February 14, 2012 Criminal Conviction for Disturbing the Peace on October 9, 2011)

13. Respondent has subjected her registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about February 14, 2012, in a criminal proceeding entitled *People of the State of California v. Nieva Nereida Rangel aka Neiva Nereida Rangel,* in Riverside County Superior Court, case number RIM1200152, Respondent was convicted on her plea of guilty to violating Penal Code section 415(2), disturbing the peace, a misdemeanor.

b. As a result of the conviction, on or about February 14, 2012, Respondent was granted summary probation for 12 months, fined $400, and ordered to perform 64 hours of community service. On or about September 7, 2012, a hearing was held on Respondent's failure to perform community service. Respondent's probation was revoked and reinstated on the same terms. The court committed Respondent to the custody of the Riverside Sheriff for an additional term of 30 days in the Labor Program.

c. The facts that led to the conviction are that on or about 4:44 in the morning, the Corona Police Department was dispatched to Respondent's apartment in reference to a loud party. Upon arrival, an officer knocked on Respondent's apartment door several times before she answered. Inside the apartment the officer could see approximately 15 people standing around, beer cans throughout the room, and a strong odor of marijuana. The officer directed Respondent to turn off the music and end the party. Respondent stated she would take care of it and attempted to slam the door on the officer. The officer directed Respondent to step outside of the apartment; she began to argue with the officer and refused to shut down the party. Two of the partygoers approached the officer and became confrontational. The reporting party stated that Respondent frequently hosted loud parties that lasted throughout the night, and requested that Respondent be placed under citizen's arrest for disturbing the peace. Respondent was cited for disturbing the peace and released.

SECOND CAUSE FOR DISCIPLINE

(April 9, 2012 Criminal Convictions for DUI on March 9, 2012)

14. Respondent has subjected her registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

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a. On or about April 9, 2012, in a criminal proceeding entitled *People of the State of California v. Neiva Nereida Rangel,* in Orange County Superior Court, case number 12NM03672, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence, and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 or more, misdemeanors. Respondent admitted, and the court found true the special allegation that Respondent's BAC was .15 percent or more, pursuant to Vehicle Code section 23578. The court certified Respondent's BAC as .18 percent.

b. As a result of the convictions, on or about April 9, 2012, Respondent was granted informal probation for three years. Respondent was ordered to pay fees, fines, and restitution, complete a six-month Level 2 First Offender Alcohol Program and a MADD Victim Impact Panel session, and comply with DUI probation terms.

c. The facts that led to the convictions are that on or about the evening of March 9, 2012, officers with the California Highway Patrol (CHP) were dispatched to investigate a driver (Respondent) travelling westbound in the eastbound lanes of Highway 91 in the vicinity of Buena Park. Upon arrival, the CHP officer saw Respondent's vehicle stopped in the center divider facing the wrong direction. The CHP officer created a traffic break and attempted to intercept Respondent, but she made a U-turn on the freeway and exited. The officers made contact with Respondent; they noticed a shattered windshield and asked Respondent if she had been in a collision. Respondent told the officers it was from a previous accident. Respondent stated that she became lost and somehow her vehicle had spun out on the freeway. The officers could smell the odor of an alcoholic beverage on Respondent's breath. Respondent admitted to consuming alcohol earlier in the evening. She displayed the objective symptoms of intoxication: her eyes were red and watery, and her speech was slurred. Respondent was unable to complete the field sobriety tests as explained and demonstrated by the officer, and she was arrested for driving under the influence. Two breath samples provided by Respondent were analyzed with a BAC of .18 percent.

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THIRD CAUSE FOR DISCIPLINE

(September 7, 2012 Criminal Conviction for DUI on June 30, 2012)

15. Respondent has subjected her registration to discipline under sections 490 and 4301, subdivision (l) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. After Respondent failed to appear at her scheduled arraignment, on or about September 7, 2012, in a criminal proceeding entitled *People of the State of California v. Neiva Nereida Rangel,* in Riverside County Superior Court, case number RIM1211788, Respondent was convicted on her plea of guilty to violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 or more, a misdemeanor. Respondent was also found guilty of driving on a license suspended for a previous DUI conviction (Veh. Code, § 14601.2(a)). The court found true the special allegations that Respondent was convicted of driving under the influence within the previous 10 years, and that her BAC was .15 percent or more. The court dismissed an additional count of violating Vehicle Code section 23152, subdivision (a), driving under the influence, pursuant to a plea agreement.

b. As a result of the conviction, on or about September 7, 2012, Respondent was sentenced to serve 50 days in the custody of the Riverside County Sheriff's Labor Program, with credit for four days. Respondent was granted summary probation for 48 months, and ordered to pay fines and penalties in the amount of $2,044, complete a Drinking Driver Program, and comply with DUI probation terms. Respondent's probation has been revoked and reinstated for failure to complete the work release program, and failure to complete the Drinking Driver Program.

c. The facts that led to the convictions are that on or about the evening of June 30, 2012, state park police officers were patrolling campgrounds at the State Recreational Area at Lake Perris. They observed a vehicle, driven by Respondent, commit several traffic violations. Respondent made an illegal U-turn in front of the officers, and proceeded in the opposite direction. The officers followed Respondent and conducted a traffic stop. Upon contact with Respondent, the officers observed a strong odor of an alcoholic beverage emitting from inside the

vehicle. Respondent admitted to consuming alcohol earlier in the evening. The officers had Respondent exit her vehicle to perform field sobriety tests. Respondent had a strong odor of an alcoholic beverage on her breath, her speech was slow, slurred, and repetitive, her eyes were bloodshot and watery, and she walked with an unsteady gait. Respondent was unable to complete the field sobriety tests as explained and demonstrated by the officer. Respondent was arrested for driving under the influence. Three breath samples provided by Respondent were analyzed at the scene by the preliminary alcohol screening device with a BAC of .210 and .225, respectively. Three additional breath samples taken at booking were analyzed with a BAC of .24 and .21 percent.

FOURTH CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

16. Respondent has subjected her registration to disciplinary action under section 4301, subdivision (h) of the Code for unprofessional conduct in that on or about March 9, 2012, and June 30, 2012, Respondent operated a motor vehicle while substantially impaired by alcoholic beverages, as described in paragraphs 14 and 15, above.

FIFTH CAUSE FOR DISCIPLINE

(Multiple Alcohol-Related Convictions)

17. Respondent has subjected her registration to disciplinary action under section 4301, subdivision (k) of the Code for unprofessional conduct in that on or about April 9, 2012, Respondent was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 percent or more, as described in paragraph 14, above. On or about September 7, 2012, Respondent was convicted of violating Vehicle Code section 23152, subdivision (b), driving with a BAC of .08 or more, as described in paragraph 15, above.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 99226, issued to Neiva Nereida Rangel;

2. Ordering Neiva Nereida Rangel to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 7/22/13

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

SD2013705125