

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

In the Matter of the Accusation Against:

**CARLOS VALENCIA**

**Pharmacy Technician Registration No.  
TCH 58672,**

Respondent.

Case No. 4761

OAH No. 2015040047

**DECISION AND ORDER**

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

This decision shall become effective on October 16, 2015.

It is so ORDERED on September 16, 2015.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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Amy Gutierrez, Pharm.D.  
Board President

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**PROPOSED DECISION**

This matter came on regularly for hearing on August 20, 2015, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Kriththika Vasudevan, Deputy Attorney General.

Carlos Valencia (Respondent) was present and represented himself.

Oral and documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant is the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On September 24, 2004, the Board issued Original Pharmacy Technician Registration Number TCH 58672 to Respondent. The license was in full force and effect at all relevant times. It will expire on December 31, 2015, unless renewed.

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3. On April 12, 2013, in the Superior Court of California, County of Los Angeles, in case number KA099506, Respondent pled nolo contendere and was convicted of violating Health and Safety Code section 11359 (possession of marijuana for sale) (Count 1), and Health and Safety Code section 11357, subdivision (a) (possession of concentrated cannabis) (Count 2), felonies substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

4. Sentence was "stayed in abeyance" as to Count 1. As to Count 2, imposition of sentence was suspended and Respondent was placed on formal probation for three years under various terms and conditions including incarceration in the Los Angeles County Jail for 180 days with 10 days credit for time served and 10 days credit for good time/work time, payment of fines and assessments totaling \$350, a prohibition against possessing or using narcotics, dangerous or restricted drugs, or associated paraphernalia, and a prohibition against possessing, using, or owning dangerous or deadly weapons. Respondent was also ordered to cooperate with his probation officer in a plan for substance abuse therapy, and to seek and maintain training, schooling or employment. The court further ordered that Count 2 could be reduced to a misdemeanor if Respondent was in compliance with the probationary conditions.

5. The facts and circumstances underlying the conviction are that, on September 22, 2012, during a traffic stop, a Los Angeles County Sheriff's deputy noticed a strong odor of marijuana coming from Respondent's vehicle. Inside the vehicle, she located a large "Ball" glass jar containing a substance resembling marijuana. The deputy also located cash totaling \$1,470 in small denominations in Respondent's pocket, and his cell phone containing text messages and photographs consistent with marijuana sales.

6. On April 22, 2014, Respondent submitted to the court proof of completion of a 26-week outpatient drug counseling program. At the administrative hearing, Respondent explained that he had abstained from marijuana during his participation in the program because drug testing was one of the program's requirements. However, upon completion of the program, when he was no longer obligated to undergo drug testing, Respondent returned to smoking marijuana. He last did so six or seven weeks before the administrative hearing.

7. As factors in aggravation, Complainant alleged and proved two additional marijuana-related criminal convictions.

a. On September 12, 2008, in the Superior Court of California, County of Los Angeles, in case number 8RI04817, Respondent pled nolo contendere and was convicted of violating Penal Code section 12031, subdivision (a)(1) (carrying a loaded firearm in a public place), a misdemeanor substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

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b. Respondent was placed on summary probation for a period of 36 months under various terms and conditions including incarceration in the Los Angeles County Jail for 20 days with credit for two days, payment of fines, fees, and assessments totaling \$529.38 or 10 additional days of incarceration (Respondent chose the incarceration), and a prohibition against owning, using or possessing any dangerous or deadly weapons, with a 10-year prohibition as to firearms.

c. The facts and circumstances underlying the conviction are that, on August 2, 2008, El Monte Police officers made a traffic stop of a vehicle in which Respondent was a passenger. Inside the vehicle, the officers located a nine millimeter handgun and a glass jar containing a substance resembling marijuana. Respondent admitted to the officers that both items belonged to him. He told the officers he kept the handgun with him for protection because he was carrying marijuana.

d. On August 21, 2009, in the Superior Court of California, County of Los Angeles, in case number 9JB04763, Respondent pled guilty and was convicted of violating Vehicle Code section 23222, subdivision (b) (driving while in possession of less than one ounce of marijuana), a misdemeanor<sup>1</sup> substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770. Respondent was still on probation from his September 12, 2008 conviction at the time of the August 21, 2009 conviction.

e. Respondent was ordered to pay fines, assessments and surcharges totaling \$459. He was given the option of serving four days of tree farm service in lieu of the \$100 fine. On December 7, 2009, Respondent failed to appear for a post-sentencing hearing. The court issued a bench warrant in the amount of \$15,000. The bench warrant was recalled on March 8, 2010, and Respondent was ordered to serve five days in the Los Angeles County Jail.

f. The facts and circumstances underlying the conviction are that, on May 22, 2009, Los Angeles County Sheriff's deputies detected a strong odor of marijuana coming from Respondent's vehicle during a traffic stop. Respondent surrendered one marijuana cigarette to the deputies.

8. Respondent has held a medical marijuana card for approximately three years. The evidence did not disclose the nature of the disorder from which Respondent suffers that justified the issuance of that card.

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<sup>1</sup> The language of the statute indicates that the offense is an infraction punishable by a fine of not more than \$100. However, the criminal complaint was pled as a misdemeanor, and Respondent pled guilty to a misdemeanor.

9. Respondent admits that his illegal conduct was wrong, and that he knew it would eventually lead to license discipline. He maintains that the marijuana found in the large jar in his most recent arrest was for his personal use, and that the large amount of cash in his pocket was intended to cover expenses on his planned trip to Oakland to attend a professional football game. He also denied ownership of the photographs on his cell phone. However, the text messages and photographs on his cell phone belie the veracity of his statements.

10. Respondent emphasized that his most recent conviction of possession of marijuana for sale will be reduced from a felony to a misdemeanor if he complies with the terms and conditions of his probation. Although he completed the outpatient program, he has not yet paid the fines, and his offense remains a felony.

11. Respondent believes the Board should not revoke his pharmacy technician registration and instead impose a fine because he "grew up" (Respondent's term) and will not re-offend.

12. The Board incurred costs, including attorney fees, in the total sum of \$3,972.50, in connection with the investigation and prosecution of this action. Investigation costs total \$30. The remainder are prosecution costs. All costs are found to be just and reasonable.

#### LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4060, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, for conviction of a substantially related crime, as set forth in Findings 3, 4, and 5.

2. Cause exists to discipline Respondent's pharmacy technician registration pursuant to Business and Professions Code sections 4060 and 4301, subdivision (j), in conjunction with California Code of Regulations, title 16, section 1770, for illegal possession of a controlled substance, as set forth in Findings 3, 4, and 5.

3. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 12.

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4. Respondent claims that, at the time of his most recent arrest, the large amount of marijuana was for his personal use, the cash was for a football game in Oakland, and the photographs on his cell phone were not his. In light of his extensive history of marijuana use and the substantial indicia of marijuana sales, those claims are not persuasive. Even if they were, they would not mitigate his guilt in connection with the possession of marijuana for sale charge. "Regardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449.)

5. The Board has established criteria for assessing rehabilitation in connection with determining license discipline for a licensee. California Code of Regulations, title 16, section 1769, subdivision (b),<sup>2</sup> states:

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.

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<sup>2</sup> The Administrative Law Judge also considered the criteria set forth in the Board's Disciplinary Guidelines (rev. 10/2007), at page 3.

6. Respondent has not satisfied the Board's criteria for rehabilitation. His crimes were serious in that they involved a Schedule I controlled substance and, on one occasion, a firearm held for protection because Respondent was in possession of that substance. Respondent has suffered three convictions involving marijuana in an approximate six-year period. Less than three years has passed since Respondent's most recent arrest. His latest conviction occurred approximately two years and four months ago. Respondent has not yet complied with all of the terms and conditions of his present criminal probation. He claims as evidence of his rehabilitation his contention that he has grown. However, given the recency of his latest arrest and conviction, his claim of personal growth is not convincing. Although one would expect exemplary conduct from Respondent because he is still on criminal probation (*In re Gossage* (2000) 23 Cal.4th 1080, 1099), Respondent returned to marijuana use once he was no longer subject to drug testing pursuant to a court order.

7. Respondent offered no evidence of rehabilitation other than his testimony that he has grown. "Favorable testimony of acquaintances, neighbors, friends, associates and employers with reference to their observation of the daily conduct and mode of living" can be helpful in determining whether a person seeking licensure is rehabilitated. (See, *In the Matter of Brown* (1993) 2 Cal. State Bar Ct. Rptr. 309, 317- 318.)

8. Having suffered three marijuana-related convictions in approximately six years, one involving two felonies, and one involving a firearm, Respondent has acted in blatant disregard of the law. He has shown very little rehabilitation despite his remaining on probation. His continued marijuana use, even while he is on probation, bodes poorly for the prospect of complete rehabilitation and public protection. Although Respondent enjoys the protection of a medical marijuana card, he has proven that he cannot be trusted to use marijuana responsibly and legally.

9. A pharmacy technician has access to all drugs in a pharmacy. Respondent cannot yet be trusted with that responsibility. The public health, safety, welfare and interest cannot be adequately protected if Respondent retains his licensure.

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ORDER

1. Pharmacy Technician Registration Number TCH 58672, issued to Respondent, Carlos Valencia, is revoked.

2. Within 90 days of the effective date of this Order, Respondent, Carlos Valencia, shall pay to the Board its costs of investigation and prosecution in the amount of \$3,972.50.

Dated: August 24, 2015



H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings



1 KAMALA D. HARRIS  
Attorney General of California  
2 ARMANDO ZAMBRANO  
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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:

Case No. 4761

13 **CARLOS VALENCIA**  
451 Yorbita Road  
La Puente, CA 91744

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

14 **Pharmacy Technician Registration No. TCH**  
15 **58672**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 24, 2004, the Board issued Pharmacy Technician Registration  
23 No. TCH 58672 to Carlos Valencia (Respondent). The Pharmacy Technician Registration was in  
24 full force and effect at all times relevant to the charges brought herein and will expire on  
25 December 31, 2015, unless renewed.

26 **JURISDICTION**

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

1 STATUTORY PROVISIONS

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

6 5. Section 490 states, in pertinent part:

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

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

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

21 6. Section 4060 states, in pertinent part:

22 "No person shall possess any controlled substance, except that furnished to a person upon  
23 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
24 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
25 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
26 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
27 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
28 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052."

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

16          ....

17          "(l) The conviction of a crime substantially related to the qualifications, functions, and  
18 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
19 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
20 substances or of a violation of the statutes of this state regulating controlled substances or  
21 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
22 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
23 The board may inquire into the circumstances surrounding the commission of the crime, in order  
24 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
25 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
26 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
27 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
28 of this provision. The board may take action when the time for appeal has elapsed, or the

1 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
2 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
3 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
4 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
5 indictment.

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

10 10. Section 4021 provides:

11 "Controlled substance" means any substance listed in Chapter 2 (commencing with Section  
12 11053) of Division 10 of the Health and Safety Code.

13 11. Section 4060 of the Code states:

14 "No person shall possess any controlled substance, except that furnished to a person upon  
15 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
16 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
17 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
18 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
19 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
20 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
21 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
22 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
23 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
24 labeled with the name and address of the supplier or producer.

25 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a  
26 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and  
27 devices."

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1 **REGULATORY PROVISIONS**

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

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

9 **CONTROLLED SUBSTANCE**

10 13. "Marijuana," is a schedule I controlled substance as defined in Health and Safety  
11 Code section 11054, subdivision (d)(13) and is categorized a dangerous drug pursuant to section  
12 4022.

13 **COST RECOVERY**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of a Substantially Related Crime)**

20 15. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
21 490, and 4060, in conjunction with California Code of Regulations, title 16, section 1770, in that  
22 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
23 duties of a pharmacy technician, as follows:

24 a. On or about April 12, 2013, after pleading nolo contendere, Respondent was  
25 convicted of one felony count of violating Health and Safety Code section 11359 [possession of  
26 Marijuana for sale] and one felony count of Health and Safety Code section 11357, subdivision  
27 (a) [possession of concentrated cannabis] in the criminal proceeding entitled *The People of the*  
28 *State of California v. Carlos Valencia* (Super. Ct. Los Angeles County, 2013, No. KA099506).

1 The Court sentenced Respondent to three (3) years formal probation, ordered him to serve 180  
2 days in county jail, and pay fines and fees.

3 b. The circumstances surrounding the conviction are that on or about September 22,  
4 2012, a Los Angeles County Sheriff's Department deputy stopped Respondent's car for a series  
5 of traffic violations. When the deputy approached the car, he noted a pungent smell of marijuana  
6 emitting from the vehicle. The deputy located a black backpack in the back seat of Respondent's  
7 car that contained a large "Ball" glass jar filled with marijuana. During a pat down search of  
8 Respondent, the deputy recovered \$1,470 in several small denominations and a cell phone. In the  
9 cell phone, the deputy found text messages indicating Respondent had delivered marijuana to at  
10 least two (2) people. Given the fact Respondent had a large amount of cash in small  
11 denominations, a large quantity of marijuana, and the text messages, the deputy formed the  
12 opinion Respondent was selling marijuana.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Illegal Possession of a Controlled Substance)**

15 16. Respondent is subject to disciplinary action under section 4301, subdivision (j) and  
16 (o) for violating section 4060 in that on or about September 22, 2012, Respondent was found to  
17 be in illegal possession of a controlled substance. Complainant refers to, and by this reference  
18 incorporates, the allegations set forth above in paragraph 15, subparagraph (b), as though set forth  
19 fully.

20 **DISCIPLINE CONSIDERATIONS**

21 17. To determine the appropriate degree of discipline in this matter, Complainant alleges  
22 as follows:

23 a. On or about August 21, 2009, Respondent was convicted of one misdemeanor count  
24 of Vehicle Code section 23222, subdivision (b) [possession of one ounce or less of marijuana] in  
25 the criminal proceeding entitled *The People of the State of California v. Carlos Valencia* (Super.  
26 Ct. Los Angeles County, 2009, No. 9JB04763.) The Court ordered Respondent to pay a fine. The  
27 circumstances surrounding the conviction are that on or about May 22, 2009, sheriff's deputies  
28 stopped Respondent's car for a traffic violation. When a deputy approached Respondent's side

1 window, he could smell the odor of marijuana emitting from the car. The deputy asked  
2 Respondent if he had any marijuana. The Respondent handed his cigarette to the deputy and said  
3 that was "all the weed I have."

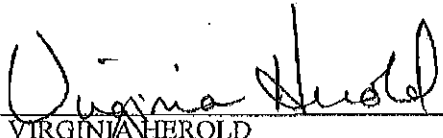
4 b. On or about September 12, 2008, Respondent was convicted of one misdemeanor  
5 count of violating Penal Code section 12031, subdivision (a)(1) [carry loaded firearm in a public  
6 place] in the criminal proceeding entitled *The People of the State of California v. Carlos Valencia*  
7 (Super. Ct. Los Angeles County, 2008, No. 8RI04817.) The Court sentenced Respondent to serve  
8 20 days in Los Angeles County Jail and placed him on 3 years probation, with terms and  
9 conditions. The circumstances surrounding the conviction are that on or about August 2, 2008,  
10 Respondent was a passenger in a car stopped by the police. Upon a search of the car, officers  
11 found a glass jar filled with marijuana and a loaded Glock 17 nine millimeter gun. Respondent  
12 admitted that the marijuana and the firearm were his. He stated he had the firearm for protection  
13 since he was carrying marijuana.

14 PRAYER

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

- 17 1. Revoking or suspending Pharmacy Technician Registration No. TCH 58672, issued  
18 to Carlos Valencia;
- 19 2. Ordering Carlos Valencia to pay the Board the reasonable costs of the investigation  
20 and enforcement of this case, pursuant to section 125.3; and
- 21 3. Taking such other and further action as deemed necessary and proper.

22  
23  
24 DATED: 11/10/14

  
25 VIRGINIA HEROLD  
26 Executive Officer  
27 Board of Pharmacy  
28 Department of Consumer Affairs  
State of California  
Complainant