



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

BOARD OF PHARMACY

2016 MAR 29 PM 3:28

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

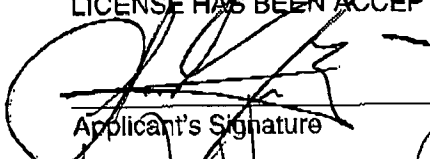
PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Giovanni Muñoz</u>	Case No. <u>AC4780</u>
Address of Record: <u>7156 Firmament Ave</u> <u>Van Nuys, CA, 91406</u>	


Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC4780, I hereby request to surrender my pharmacy technician license, License No. TEH 87321. 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.



 Applicant's Signature



 Executive Officer's Approval

3/28/16

 Date

3/30/16

 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.

To: Jane E. Russell

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

In the Matter of the Accusation Against:

GIOVANNI MUNOZ

Pharmacy Technician Registration
No. TCH 87321

Respondent.

Case No. 4780

OAH No. 2014110208

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 November 6, 2015.

It is so ORDERED on October 7, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

GIOVANNI MUNOZ,

Respondent.

Case No. 4780

OAH No. 2014110208

ORDER TO ISSUE CORRECTED PROPOSED DECISION

The hearing in the above-captioned matter took place on June 11, 2015, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), at Los Angeles. Complainant Virginia Herold was represented by Michael Brown, Deputy Attorney General. Respondent Giovanni Munoz appeared and represented himself.

On July 13, 2015, the ALJ issued his proposed decision in the case. Thereafter, on July 27, 2015, Laura Freedman, counsel for the Board of Pharmacy, wrote to Presiding Administrative Law Judge Susan Formaker, pointing out a perceived error in the Proposed Decision, and asking for correction. Specifically, she pointed out that one of the legal conclusions determined the reasonable amount of costs that should be imposed, but the order did not speak to the matter of costs and their payment.

There was no objection to the request for correction of the Proposed Decision.

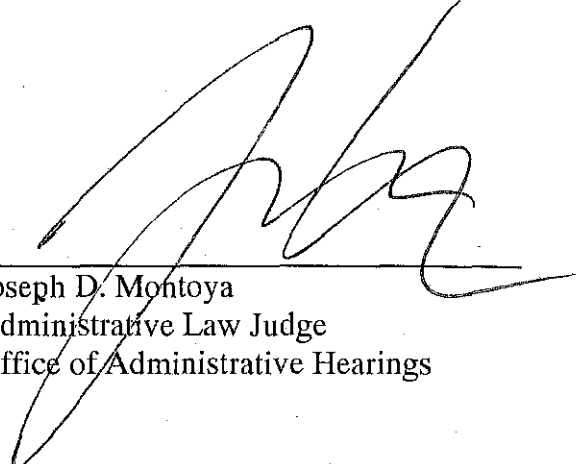
California Code of Regulations, title 1 (CCR), section 1048, subdivision (a), provides that the agency may apply to OAH to correct a mistake or clerical error, or to make minor or technical changes to a proposed decision. Further, CCR section 1048, subdivision (c), allows the ALJ to act on his own to corrected minor and technical errors. In this case there was a discrepancy in the Proposed Decision between the legal conclusions and the order, which should be corrected.

It was the intent of the ALJ to order Respondent to pay costs in the amount of \$2,500. The failure to include a provision in the order directing the payment of costs resulted from inadvertence and mistake of the undersigned in the course of editing and completing the proposed decision. It is deemed a technical mistake, subject to correction by the undersigned. (See *Russ v. Smith* (1968) 264 Cal.App.2d 385, 391.)

Therefore, a Corrected Proposed Decision shall issue, to reconcile the legal conclusions and order. A new paragraph 7 shall be added to the order/probation terms, resulting in renumbering of the other paragraphs. The new paragraph 7 will be based on the Board's standard terms, but modified to delete the language regarding bankruptcy. A new legal conclusion, numbered 4(D), will be added to explain deletion of part of the standard term regarding bankruptcy, as the ALJ believes the term is contrary to law.

During the process of preparing the Corrected Proposed Decision, the ALJ found a grammatical error, in that the word "making" was repeated twice in a sentence in Legal Conclusion 4(C); that will be corrected as well.

August 11, 2015



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

GIOVANNI MUNOZ,

Respondent.

Case No. 4780

OAH No. 2014110208

CORRECTED PROPOSED DECISION

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Evidence was received, the case was argued, and the matter was submitted for decision on the hearing date. Thereafter, the ALJ issued his Proposed Decision on July 13, 2015.

On July 27, 2015, Laura Freedman, counsel for the Board of Pharmacy, wrote to Presiding Administrative Law Judge Susan Formaker, pointing out a perceived error in the Proposed Decision, and asking for correction. Specifically, she pointed out that one of the legal conclusions determined the reasonable amount of costs that should be imposed, but the order did not direct their payment. There was no objection to the correction request.

On August 11, 2015, the ALJ issued an order to correct the Proposed Decision, addressing the costs issue, and a grammatical error the ALJ discovered in Legal Conclusion 4(C).

Based on the foregoing, the ALJ hereby issues this Corrected Proposed Decision, with the following factual findings, legal conclusions, and order.

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FACTUAL FINDINGS

1. Complainant filed the Accusation against Respondent while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

2. On November 1, 2008, the Board issued Pharmacy Technician Registration number TCH 87321 to Respondent. The registration will expire on December 31, 2015, unless renewed.

3. (A) Respondent suffered two criminal convictions in 2013, and there is a connection between them. Respondent's first conviction occurred on March 28, 2013. He was then convicted in the Superior Court of California, County of Los Angeles, of driving while having more than .08 percent blood alcohol, in violation of Vehicle Code section 23152, subdivision (b) (DUI conviction). The conviction was based on Respondent's plea of nolo contendere, and he was thereby convicted of a misdemeanor.

(B) The court suspended imposition of sentence and placed Respondent on 36 months probation, on the condition that he pay fines, fees, penalties, and assessments totaling \$1,773, and that he serve 13 days in county jail, less two days credit. The court ordered that Respondent could perform CalTrans work, for 11 days, in lieu of paying some of the fines. Respondent was also ordered to attend Alcoholics Anonymous (AA) meetings, twice per week until 52 meetings had been attended, and he was ordered to enroll in and complete a 21 day program. Respondent was further ordered to install an ignition interlock device on his car, and not to operate a vehicle with any alcohol in his system. Other terms and conditions, standard to probation grants, were imposed as well.

(C) The crime occurred on March 3, 2013, at about 12:30 a.m. Respondent and three companions had been to a restaurant in the west San Fernando Valley. Respondent had been drinking, and drove the group away from the restaurant. When he got on the freeway, he realized he was having trouble driving, and he pulled the car over. A highway patrolman, on routine patrol, spotted the vehicle on the side of the freeway, and pulled over to investigate. Respondent was obviously intoxicated, and breathalyzer tests showed .29 and .31 blood alcohol.

4. (A) Respondent's second conviction was entered against him on August 12, 2013, when he was convicted of one count of driving while his driving privileges were suspended, in violation of Vehicle Code section 14601.2, subdivision (a). The conviction was for a misdemeanor, and was entered in the Superior Court of California, County of Los Angeles, based on Respondent's plea of nolo contendere.

(B) The court suspended imposition of sentence and placed Respondent on probation for a period of three years, subject to the condition that he

serve 10 days in county jail, with credit for eight days served, four actual days served and four days good behavior. Respondent was ordered to pay fines, fees, penalties, and assessments totaling \$1,617. He was given the option of performing 80 hours of community service in lieu of serving the jail time and paying fines. He was required to obtain an ignition interlock device, and ordered to surrender his driver's license until he did so.

(C) The facts and circumstances of this crime are that Respondent was driving several people in Los Angeles on the evening of August 9, 2013 when he was pulled over because two of his passengers were not wearing their seatbelts. When the police spoke to him, he admitted that he did not have his license, because it had been suspended. He admitted the lack of license pertained to his DUI conviction. The car he was driving did not have an ignition interlock device.

5. Respondent's convictions are substantially related to the duties, qualifications, and functions of a pharmacy technician.

6. Respondent remains on probation from the two convictions, through August 9, 2016. He is current in his requirements. He completed the drunk driving course, and he completed 80 hours of community service, the alternative imposed by the court after the second conviction, by October 22, 2013. He has installed the ignition interlock device, which costs him \$87 per month. He can therefore drive again, the suspension of his license lifted because of his compliance.

7. Respondent is 27 years old, and is employed as a pharmacy technician with Omni Care, a closed-door pharmacy that serves nursing homes. He now works the graveyard shift, in part because it pays a little more than the day shift, \$18 per hour as opposed to \$16 per hour. He needs the extra pay because he is the primary care giver for his three-year-old daughter. Respondent does not perform deliveries to his employer's customers.

8. Respondent credibly testified that while he occasionally drinks, he has stopped going out to the bars, and he no longer drinks and drives. He credibly stated that he has learned a hard (and expensive) lesson; this is borne out by the way he has complied with probation since the second arrest. With the primary job of taking care of his child, he made it clear that he has a great incentive to stay out of trouble with the law, and the Board. Respondent knows that he has engaged in significant misconduct, and he appears unlikely to transgress again.

9. The Board has incurred costs of investigation and prosecution in this matter of \$5,567.50.

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LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, based on Factual Findings 3, 4, and 5.

2. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), because he used alcohol in a manner dangerous or to himself or others, based on Factual Finding 3.

3. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (o), because he engaged in violations of the law on two occasions, based on Factual Findings 3 through 5.

4. (A) Based on Legal Conclusions 1 through 3, the Board may recover its reasonable costs of investigating and prosecuting this disciplinary proceeding, pursuant to Business and Professions Code section 125.3.

(B) Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board in imposing costs in such situations must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a colorable claim. The Board must consider the licensee's ability to make payment. Finally, the Board "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Id.*, footnote omitted.)

(C) The Board's costs exceed \$5,500. (Factual Finding 9.) Respondent is a single parent, making approximately \$720 per week before taxes.¹ Plainly, his ability to pay such a large amount of money is limited. Further, the case was not especially complex, and it was hardly necessary to have an expert witness explain why clear violations of Business and Professions Code section 4301, subdivisions (l) and (h), were substantially related to the duties, functions and

¹ See Factual Finding 7. The calculation here assumes a 40 hour work week.

qualifications of a pharmacy technician. In all the facts and circumstances of this case, which could have been presented on paper, the reasonable costs are \$2,500.

(D) The Board's standard terms for cost payment state that the obligation to pay the costs is not dischargeable in bankruptcy. The ALJ must disagree with the Board in this matter. The Federal courts have concluded that the costs imposed by the California State Bar in disciplinary proceedings are dischargeable under 11 U.S.C. 523 (a)(7), in that they are not a fine, but are paid in compensation of actual pecuniary loss by the State Bar. (*In Re Taggart* (9th Cir. 2001) 249 F.3d 987.) It is plain that section 125.3 is designed to compensate licensing agencies for the pecuniary loss suffered when they must pursue a disciplinary action. (See *Oranen v. State Bd. of Chiropractic Examiners* (1999) 77 Cal.App.4th 258, 262, describing section 125.3 as a cost "reimbursement" statute.) Hence, it must be concluded that such costs are dischargeable, and the standard term will be modified accordingly.

5. The Board has established Disciplinary Guidelines, which list criteria for use in determining the level of discipline to be imposed. Those criteria, not exclusive, are:

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.

6. (A) Applying the criteria, it is concluded that there was no actual harm to the public or a consumer. There was potential harm to the public as a result of the

DUI, but not to consumers, as Respondent was not working when he committed his crime. Respondent has no disciplinary record. There are two convictions, now at least two years old.

(B) The DUI conviction is fairly serious, aggravated by the high blood alcohol readings. It is aggravating that Respondent drove on a suspended license as well. It does appear that Respondent's second conviction had a real impact on Respondent, because he is now in full compliance with his probation terms, and by the attitude he exhibited during the hearing. Respondent has not had either conviction set aside. The convictions did not bring a financial benefit to Respondent; the opposite is true as they cost him many thousands of dollars, or hours invested in community service.

(C) Respondent's rehabilitation evidence could have been stronger—he did not bring any character witnesses, or letters of that type. However, he appeared serious during his testimony about staying out of further trouble, and to keeping to his work so that he can support his child.

7. (A) The purpose of proceedings of this type is to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) Based in part on the attitude that Respondent conveyed during the hearing, which was contrite and respectful, it appears that a probationary license would be sufficient to protect the public.

(B) While the Board's disciplinary guidelines indicate that a 90 day suspension should be ordered in most cases where probation is imposed, that would be unduly punitive in this case, and a suspension will not be ordered. One will likely follow from the standard term requiring recertification. It should be noted that optional terms pertaining to drug and alcohol screening, attendance at AA meetings, and complete abstinence have not been included. The Guidelines note that such should be used in the case of alcohol or drug dependency, and the record does not support a finding of dependency. Experience teaches that a drunk driving conviction alone does not establish alcoholism on the part of the driver. Such was recognized by the Court of Appeal in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 767, a case where the Medical Board's authority to discipline a physician for more than one DUI conviction was upheld. There, the court stated: "[i]t is undoubtedly true that not every conviction involving alcohol warrants the suspension or revocation of a professional license . . ." (*Griffiths v. Superior Court, supra*, 96 Cal.App.4th at 779.) To be sure, the court went on to say that such a conviction might reflect a personal problem involving alcohol consumption that would allow action before the licensee's practice was affected by such a personal problem. However, there is no evidence that Respondent has some personal problem involving alcohol consumption.

ORDER

Pharmacy technician license number TCH 87321, issued to Respondent Giovanni Munoz is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work: Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent may not work as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation.

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 work as a pharmacy technician until notified by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws: Respondent shall obey all state and federal laws and regulations.

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's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

5. Cooperate with Board Staff: Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her 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 5086 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 or her 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 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her 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 or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5086 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 or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her 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. Payment of 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 \$ 2,500. Respondent shall make said payments as follows: \$70 per month, beginning 90 days after the effective date of this decision; the last payment to be whatever balance is owing at that time. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

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

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

10. License Surrender While on Probation/Suspension: Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her 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 or her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation: Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

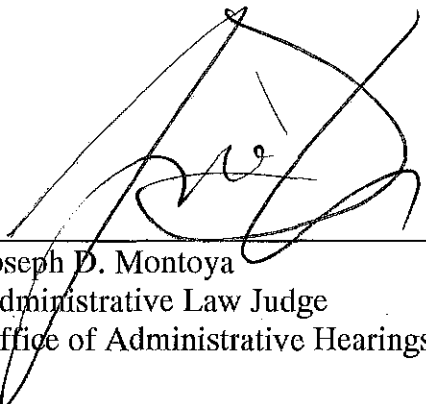
"Cessation of work" means calendar month during which Respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation: If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation: Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

August 11, 2015



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

GIOVANNI MUNOZ,

Respondent.

Case No. 4780

OAH No. 2014110208

PROPOSED DECISION

The hearing in the above-captioned matter took place on June 11, 2015, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant Virginia Herold was represented by Michael Brown, Deputy Attorney General. Respondent Giovanni Munoz appeared and represented himself.

Evidence was received, the case was argued, and the matter was submitted for decision on the hearing date. The ALJ hereby makes his factual findings, legal conclusions, and order.

FACTUAL FINDINGS

1. Complainant filed the Accusation against Respondent while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
2. On November 1, 2008, the Board issued Pharmacy Technician Registration number TCH 87321 to Respondent. The registration will expire on December 31, 2015, unless renewed.
3. (A) Respondent suffered two criminal convictions in 2013, and there is a connection between them. Respondent's first conviction occurred on March 28, 2013. He was then convicted in the Superior Court of California, County of Los Angeles, of driving while having more than .08 percent blood alcohol, in violation of Vehicle Code section 23152, subdivision (b) (DUI conviction). The conviction was based on Respondent's plea of nolo contendere, and he was thereby convicted of a misdemeanor.

(B) The court suspended imposition of sentence and placed Respondent on 36 months probation, on the condition that he pay fines, fees, penalties, and assessments totaling \$1,773, and that he serve 13 days in county jail, less two days credit. The court ordered that Respondent could perform CalTrans work, for 11 days, in lieu of paying some of the fines. Respondent was also ordered to attend Alcoholics Anonymous (AA) meetings, twice per week until 52 meetings had been attended, and he was ordered to enroll in and complete a 21 day program. Respondent was further ordered to install an ignition interlock device on his car, and not to operate a vehicle with any alcohol in his system. Other terms and conditions, standard to probation grants, were imposed as well.

(C) The crime occurred on March 3, 2013, at about 12:30 a.m. Respondent and three companions had been to a restaurant in the west San Fernando Valley. Respondent had been drinking, and drove the group away from the restaurant. When he got on the freeway, he realized he was having trouble driving, and he pulled the car over. A highway patrolman, on routine patrol, spotted the vehicle on the side of the freeway, and pulled over to investigate. Respondent was obviously intoxicated, and breathalyzer tests showed .29 and .31 blood alcohol.

4. (A) Respondent's second conviction was entered against him on August 12, 2013, when he was convicted of one count of driving while his driving privileges were suspended, in violation of Vehicle Code section 14601.2, subdivision (a). The conviction was for a misdemeanor, and was entered in the Superior Court of California, County of Los Angeles, based on Respondent's plea of nolo contendere.

(B) The court suspended imposition of sentence and placed Respondent on probation for a period of three years, subject to the condition that he serve 10 days in county jail, with credit for eight days served, four actual days served and four days good behavior. Respondent was ordered to pay fines, fees, penalties, and assessments totaling \$1,617. He was given the option of performing 80 hours of community service in lieu of serving the jail time and paying fines. He was required to obtain an ignition interlock device, and ordered to surrender his driver's license until he did so.

(C) The facts and circumstances of this crime are that Respondent was driving several people in Los Angeles on the evening of August 9, 2013 when he was pulled over because two of his passengers were not wearing their seatbelts. When the police spoke to him, he admitted that he did not have his license, because it had been suspended. He admitted the lack of license pertained to his DUI conviction. The car he was driving did not have an ignition interlock device.

5. Respondent's convictions are substantially related to the duties, qualifications, and functions of a pharmacy technician.

6. Respondent remains on probation from the two convictions, through August 9, 2016. He is current in his requirements. He completed the drunk driving course, and he completed 80 hours of community service, the alternative imposed by the court after the second conviction, by October 22, 2013. He has installed the ignition interlock device, which costs him \$87 per month. He can therefore drive again, the suspension of his license lifted because of his compliance.

7. Respondent is 27 years old, and is employed as a pharmacy technician with Omni Care, a closed-door pharmacy that serves nursing homes. He now works the graveyard shift, in part because it pays a little more than the day shift, \$18 per hour as opposed to \$16 per hour. He needs the extra pay because he is the primary care giver for his three-year-old daughter. Respondent does not perform deliveries to his employer's customers.

8. Respondent credibly testified that while he occasionally drinks, he has stopped going out to the bars, and he no longer drinks and drives. He credibly stated that he has learned a hard (and expensive) lesson; this is borne out by the way he has complied with probation since the second arrest. With the primary job of taking care of his child, he made it clear that he has a great incentive to stay out of trouble with the law, and the Board. Respondent knows that he has engaged in significant misconduct, and he appears unlikely to transgress again.

9. The Board has incurred costs of investigation and prosecution in this matter of \$5,567.50.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, based on Factual Findings 3, 4, and 5.

2. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), because he used alcohol in a manner dangerous or to himself or others, based on Factual Finding 3.

3. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (o), because he engaged in violations of the law on two occasions, based on Factual Findings 3 through 5.

4. (A) Based on Legal Conclusions 1 through 3, the Board may recover its reasonable costs of investigating and prosecuting this disciplinary proceeding, pursuant to Business and Professions Code section 125.3.

(B) Under *Zuckerman v. State Board of Chiropractic Examiners*, (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the statute does not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board in imposing costs in such situations must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised colorable claim. The Board must consider the licensee's ability to make payment. Finally, the Board "may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct." (*Id.*, footnote omitted.)

(C) The Board's costs exceed \$5,500. (Factual Finding 9.) Respondent is a single parent, making approximately making \$720 per week before taxes.¹ Plainly, his ability to pay such a large amount of money is limited. Further, the case was not especially complex, and it was hardly necessary to have an expert witness explain why clear violations of Business and Professions Code section 4301, subdivisions (l) and (h), were substantially related to the duties, functions and qualifications of a pharmacy technician, in all the facts and circumstances of this case, which could have been presented on paper, the reasonable costs are \$2,500.

5. The Board has established Disciplinary Guidelines, which list criteria for use in determining the level of discipline to be imposed. Those criteria, not exclusive, are:

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.

¹ See Factual Finding 7. The calculation here assumes a 40 hour work week.

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.

6. (A) Applying the criteria, it is concluded that there was no actual harm to the public or a consumer. There was potential harm to the public as a result of the DUI, but not to consumers, as Respondent was not working when he committed his crime. Respondent has no disciplinary record. There are two convictions, now at least two years old.

(B) The DUI conviction is fairly serious, aggravated by the high blood alcohol readings. It is aggravating that Respondent drove on a suspended license as well. It does appear that Respondent's second conviction had a real impact on Respondent, because he is now in full compliance with his probation terms, and by the attitude he exhibited during the hearing. Respondent has not had either conviction set aside. The convictions did not bring a financial benefit to Respondent; the opposite is true as they cost him many thousands of dollars, or hours invested in community service.

(C) Respondent's rehabilitation evidence could have been stronger—he did not bring any character witnesses, or letters of that type. However, he appeared serious during his testimony about staying out of further trouble, and to keeping to his work so that he can support his child.

7. (A) The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) Based in part on the attitude that Respondent conveyed during the hearing, which was contrite and respectful, it appears that a probationary license would be sufficient to protect the public.

(B) While the Board's disciplinary guidelines indicate that a 90 day suspension should be ordered in most cases where probation is imposed, that would be unduly punitive in this case, and a suspension will not be ordered. One will likely

follow from the standard term requiring recertification. It should be noted that optional terms pertaining to drug and alcohol screening, attendance at AA meetings, and complete abstinence have not been included. The Guidelines note that such should be used in the case of alcohol or drug dependency, and the record does not support a finding of dependency. Experience teaches that a drunk driving conviction alone does not establish alcoholism on the part of the driver. Such was recognized by the Court of Appeal in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 767, a case where the Medical Board's authority to discipline a physician for more than one DUI conviction was upheld. There, the court stated: "[i]t is undoubtedly true that not every conviction involving alcohol warrants the suspension or revocation of a professional license" (*Griffiths v. Superior Court, supra*, 96 Cal.App. 4th at 779.) To be sure, the court went on to say that such a conviction might reflect a personal problem involving alcohol consumption that would allow action before the licensee's practice was affected by such a personal problem. However, there is no evidence that Respondent has some personal problem involving alcohol consumption.

ORDER

Pharmacy technician license number TCH 87321, issued to Respondent Giovanni Munoz is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work: Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent may not work as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. 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 work as a pharmacy technician until notified by the Board.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws: Respondent shall obey all state and federal laws and regulations.

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's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.
-

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

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

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

5. Cooperate with Board Staff: Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his or her 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 5086 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 or her 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 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her 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 or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5086 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 or her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his or her 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. 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.

8. 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.

9. License Surrender While on Probation/Suspension: Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her 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 or her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. 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.

11. Tolling of Probation: Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this

minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which Respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

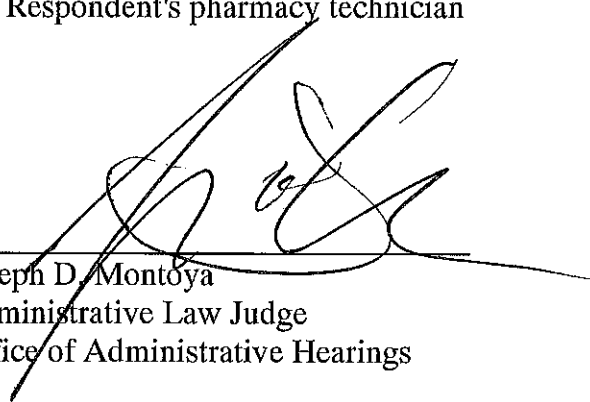
12. Violation of Probation: If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the Board has taken other action as deemed 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.

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13. Completion of Probation: Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician license will be fully restored.

July 13, 2015



Joseph D. Montoya
Administrative Law Judge
Office of Administrative Hearings

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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. 4780

13 **GIOVANNI MUNOZ**
7156 Firmament Avenue
Van Nuys, CA 91406

A C C U S A T I O N

14 Pharmacy Technician Registration
15 No. TCH 87321

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 1, 2008, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 87321 to Giovanni Munoz (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on 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.

STATUTORY PROVISIONS

1
2 4. Section 490 states, in pertinent part:

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

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

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

17 5. Section 4300 provides in pertinent part, that every license issued by the Boards is
18 subject to discipline, including suspension or revocation.

19 6. Section 4300.1 states:

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

25 7. Section 4301 states, in pertinent part:

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

1

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

7

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

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

1 REGULATORY PROVISIONS

2 8. 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 COST RECOVERY

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

16 FIRST CAUSE FOR DISCIPLINE

17 (Conviction of a Substantially Related Crime)

18 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
19 490, in conjunction with California Code of Regulations, title 16, section 1770, in that,
20 Respondent was convicted of a crime substantially related to the qualifications, functions or
21 duties of a pharmacy technician as follows:

22 a. On or about August 12, 2013, Respondent was convicted of one misdemeanor count
23 of violating Vehicle Code section 14601.2, subdivision (a) [driving while driving privileges are
24 suspended or revoked with knowledge] in the criminal proceeding entitled *The People of the State*
25 *of California v. Giovanni Munoz* (Super. Ct. Los Angeles County, 2013, No. 3MP07586). The
26 Court sentenced Respondent to serve 10 days in Los Angeles County Jail and placed him on 36
27 months probation, with terms and conditions.

28 ///

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct/ Violation of Licensing Chapter)**

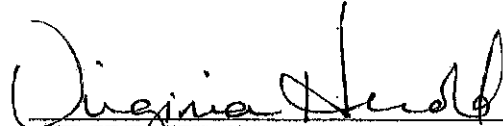
3 12. Respondent is subject to disciplinary action under section 4301, (o), in that
4 Respondent committed acts of unprofessional conduct and/ or violated provisions of the licensing
5 chapter. Complainant refers to, and by this reference incorporates, the allegations set forth above
6 in paragraphs 10, subparagraphs (a) through (d), inclusive, as though set forth fully.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician Registration No. TCH 87321, issued to
11 Giovanni Munoz;
- 12 2. Ordering Giovanni Munoz to pay the Board the reasonable costs of the investigation
13 and enforcement of this case, pursuant to section 125.3; and
- 14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 3/27/14



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

23 LA2013510002
24 51361538_3.doc
25 mc (9/9/13)