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

In the Matter of the Accusation Against: **IVAN MAURICIO ORELLANA** 43459 Cottage Lane Lancaster, CA 93536 **Pharmacy Technician Registration No. TCH 120045** Respondent.	Case No. 4953 OAH No. 2014070829 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about May 10, 2014, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 4953 against Ivan Mauricio Orellana (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about October 16, 2012, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 120045 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 4953. The license expired on July 31, 2014. Subsequently, the license was cancelled due to a non-payment of renewal fees. This lapse in licensure, however, pursuant to Business and Professions

Code section 4300.1 does not deprive the Board of its authority to institute or continue this disciplinary proceeding.

3. On or about June 2, 2014, Respondent was served by Certified and First Class Mail copies of the Accusation No. 4953, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code section 4100, is required to be reported and maintained with the Board. Respondent's address of record was and is:

43459 Cottage Lane

Lancaster, CA 93536.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about July 1, 2014, Respondent signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent's address of record and it informed him that an administrative hearing in this matter was scheduled for January 22, 2015. Respondent failed to appear at that hearing.

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 4953, finds that the charges and allegations in Accusation No. 4953, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $3,015.00 as of December 10, 2014.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Ivan Mauricio Orellana has subjected his Pharmacy Technician Registration No. TCH 120045 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician. On or about August 27, 2013, Respondent was convicted of one misdemeanor count of violating Vehicle Code Section 23103 pursuant to Vehicle Code section 23103.5 [wet reckless], in the criminal proceeding entitled The People of the State of California v. Ivan Mauricio Orellana (Super. Ct. Los Angeles County, 2013, No. ATP3AV0253601). The court placed him on probation for a period of 24 months and sentenced Respondent to five days in jail and pay a fine.

b. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section

1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician. On or about February 4, 2010, Respondent was convicted of one misdemeanor count of violating Penal Code section 136.1(b)(1) [intimidate/prevent victim from reporting crime], in the criminal proceeding entitled The People of the State of California v. Ivan Mauricio Orellana (Super. Ct. Los Angeles County, 2010, No. ATP0AV0009001). The court sentenced Respondent to 10 days community labor, placed him on probation for a period of 36 months, and complete a 12-month Domestic Violence Class.

c. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician. On or about October 14, 2008, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23222(b) [possession of marijuana], in the criminal proceeding entitled The People of the State of California v. Ivan Mauricio Orellana (Super. Ct. Los Angeles County, 2008, No. ATP8AV1037801). The court ordered Respondent to pay a fine.

d. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (j), in conjunction with Code section 4060, on the grounds of unprofessional conduct, in that on or March 23, 2013 and September 12, 2008, Respondent was in possession of marijuana, a controlled substance, violating provisions of the Health and Safety Code Section 11170 for prescribing, administering and / or furnishing a controlled substance for himself.

e. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to himself and used a dangerous drugs to the extent or in a manner as to be dangerous or injurious to himself or others.

f. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code, on the grounds of unprofessional conduct, in that Respondent was committed an act violating the Pharmacy Act.

ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 120045, heretofore issued to Respondent Ivan Mauricio Orellana, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on March 20, 2015.

It is so ORDERED February 18, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
STAN C. WEISSER
Board President

51682210.DOC
DOJ Matter ID:LA2013510585

Attachment:
Exhibit A: Accusation

Exhibit A

Accusation No. 4953

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General
CHRISTINE J. LEE
Deputy Attorney General
State Bar No. 282502
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2539
Facsimile: (213) 897-2804
Attorneys for Complainant

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

In the Matter of the Accusation Against: **IVAN MAURICIO ORELLANA** 43459 Cottage Lane Lancaster, CA 93536 **Pharmacy Technician Registration No. TCH 120045** Respondent.	Case No. 4953 **ACCUSATION**

Complainant alleges:

PARTIES

1. Virginia K. Herold (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the California State Board of Pharmacy (Board).

2. On or about October 16, 2012, the Board issued Pharmacy Technician Registration Number TCH 120045 to Ivan Mauricio Orellana (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2014, unless renewed.

///

///

///

JURISDICTION

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

4. Section 4011 of the Code provides:

"The board shall administer and enforce this chapter [Pharmacy Law, (Business and Professions Code, Sec 4000 et esq.)] and the Uniform Controlled Substances Act (Division 10 commencing with Section 11000) of the Health and Safety Code)."

5. Section 4300 of the Code permits the Board to take disciplinary action to suspend or revoke a license issued by the Board.

6. Section 4300.1 of the Code states, "the expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

7. Section 490 of the Code states, in pertinent part:

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

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

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take

following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

8. Section 493 of the Code states:

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

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

9. Section 4301 of the Code states, in pertinent part:

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

...

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

....

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

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

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

. . .

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

///

REGULATORY PROVISION

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

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

COST RECOVERY

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

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

12. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

a. On or about August 27, 2013, Respondent was convicted of one misdemeanor count of violating Vehicle Code Section 23103 pursuant to Vehicle Code section 23103.5 [wet reckless], in the criminal proceeding entitled *The People of the State of California v. Ivan Mauricio Orellana* (Super. Ct. Los Angeles County, 2013, No. ATP3AV0253601). The court placed him on probation for a period of 24 months and sentenced Respondent to five days in jail or pay a fine.

b. The circumstances surrounding the conviction are that on or about March 23, 2013, California Highway Patrol Deputies stopped Respondent's vehicle as it was traveling at an unsafe speed. The deputy observed the patrol vehicle's R.A.D.A.R. unit of Respondent's vehicle to be 81

mph. When the Deputy spoke with Respondent, he could smell a strong odor of alcohol from Respondent's vehicle. When the Deputy asked Respondent if he had anything to drink, Respondent stated he had not. When the Deputy asked Respondent if he had consumed any alcohol the night before, Respondent admitted he drank 40 ounces of beer. Respondent also admitted he had marijuana in his pant pocket. When the Deputy asked if Respondent had a medical marijuana recommendation, Respondent stated he did not. The deputy did find marijuana in Respondent's pant pocket. Respondent later submitted to a breath test resulting in a blood alcohol content of .07% on the first reading and .07% on the second reading.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

13. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

a. On or about February 4, 2010, Respondent was convicted of one misdemeanor count of violating Penal Code section 136.1(b)(1) [intimidate/prevent victim from reporting crime], in the criminal proceeding entitled *The People of the State of California v. Ivan Mauricio Orellana* (Super. Ct. Los Angeles County, 2010, No. ATP0AV0009001). The court sentenced Respondent to 10 days community labor, placed him on probation for a period of 36 months, and complete 12-month Domestic Violence Class.

b. The circumstances surrounding the conviction are that on or about January 14, 2010, San Bernardino Sheriff's Department Deputies were dispatched to respond to a spousal assault report call. Victim, who was Respondent's girlfriend with whom they share a child, told Deputies that Respondent chased her around the house, and pushed her into a large bean bag chair. Victim stated Respondent grabbed her face forcefully with his hand and threatened to leave with the baby. As victim was trying to get away, Respondent grabbed her by the hair and pushed her into the house. After several minutes, victim was able to flee with her baby to a nearby store. A

witness also observed Respondent grab the victim by the hair and pull her into the house. Victim stated there have been prior unreported domestic violence incidents in the past.

THIRD CAUSE FOR DISCIPLINE

(Conviction of a Substantially-Related Crime)

14. Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct as Respondent was convicted of a crime substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

a. On or about October 14, 2008, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23222(b) [possession of marijuana], in the criminal proceeding entitled *The People of the State of California v. Ivan Mauricio Orellana* (Super. Ct. Los Angeles County, 2008, No. ATP8AV1037801). The court ordered Respondent to pay a fine.

b. The circumstances surrounding the conviction are that on or about September 12, 2008, Los Angeles County Sheriffs deputies conducted a traffic stop of Respondent's vehicle. When contacted, the Deputy could smell the strong odor of burnt marijuana emitting from Respondent's vehicle. When the Deputy approached Respondent's vehicle, the Deputy observed the interior of the vehicle was full of smoke and could smell a strong odor of marijuana. The Deputy searched Respondent. The Deputy found a plastic baggie containing a green leafy substance resembling marijuana from the right front pocket of Respondent's pants.

FOURTH CAUSE FOR DISCIPLINE

(Illegal Possession of Controlled Substances)

15. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (j), in conjunction with Code section 4060, on the grounds of unprofessional conduct, in that on or March 23, 2013 and September 12, 2008, Respondent was in possession of a controlled substance, without a valid prescription, violating provisions of the Health and Safety Code Section 11170 for prescribing, administering and / or furnishing a controlled substance for himself. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraphs 12 and 14, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Dangerous Use of Drugs)

16. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to himself and used a dangerous drugs to the extent or in a manner as to be dangerous or injurious to himself or others. Complainant refers to and by this reference incorporates, the allegations set forth above in paragraphs 12 and 14, as though set forth fully.

SIXTH CAUSE FOR DISCIPLINE

(Violation of Pharmacy Act)

17. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code, on the grounds of unprofessional conduct, in that Respondent was committed an act violating the Pharmacy Act. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraphs 12 through 16, inclusive, as though set forth fully.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 120045, issued to Ivan Mauricio Orellana;

2. Ordering Ivan Mauricio Orellana a to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code ; and

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

DATED: 5/10/14

VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

LA2013510585
51403286.doc
3/10/14