

**California State Board of Pharmacy**

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR ED MUNDY, BROWN JR.

RECEIVED BY CALIFORNIA STATE BOARD OF PHARMACY
2015 MAR - 5 PM 3:15**APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE**

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Elizabeth Lamont</u>	Case No. <u>AC 5009</u>
Address of Record: <u>18839 E. Fondale St</u> <u>Amusa CA 91702</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 5009, I hereby request to surrender my pharmacy technician license, License No. 123075. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

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

[Signature]
Applicant's Signature

3-3-15
Date

[Signature]
Executive Officer's Approval

3/24/15
Date

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

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

In the Matter of the Accusation Against:

Elizabeth Lamont
18839 E. Fundale Street
Azusa, CA 91702

Respondent.

Case No. 5009

OAH No. 2014070298

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following change is made to number 21 on page six under Other Evidence:

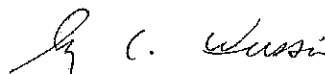
“As established by the testimony of Anna Yamada, PharmD., a licensed pharmacist and an inspector for the Board, a registered pharmacy technician assists and is supervised by a pharmacist in a retail pharmacy setting.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on January 28, 2015.

IT IS SO ORDERED this 29th day of December, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation
Against:

ELIZABETH ALEXIS LAMONT,
Pharmacy Technician Registration
No. TCH-123075,

Respondent.

Case No. 5009

OAH No. 2014070298

PROPOSED DECISION

On November 4, 2014, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter in Los Angeles. Complainant was represented by Bora Song, Deputy Attorney General. Respondent Elizabeth Alexis Lamont was present and represented by Adrian Yeung, Attorney at Law.

Oral and documentary evidence having been received and argument heard and the matter submitted for decision, the Administrative Law Judge finds as follows:

FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on May 3, 2014, Accusation, Case Number 5009, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On or about May 4, 2012, the Board issued pharmacy technician registration number TCH-123075 and registration rights to Elizabeth Alexis Lamont (respondent). Said registration was in full force and effect at all times relevant herein and expires on December 31, 2015, unless renewed. Respondent does not have any disciplinary history with the Board.

3. Respondent graduated from Glendora High School in 2001. She worked as a server for at least one restaurant for several years thereafter. In or about May 2012, respondent completed the eight-month or 240-hour curriculum and

educational requirements for issuance of a pharmacy technician registration at UEI College in El Monte. Soon after obtaining her pharmacy technician registration from the Board, she became employed full-time as a pharmacy technician at Santa Maria Pharmacy, a retail pharmacy in El Monte. Santa Maria Pharmacy also has retail outlets in Pomona and Paramount.

Conviction in San Bernardino County

4. (A) On July 17, 2013, before the Superior Court of California, County of San Bernardino, Rancho Cucamonga District, in *People v. Elizabeth Alexis Lamont*, Case Number TWV1300944, respondent was convicted on her plea of nolo contendere of driving a vehicle while under the influence of alcohol, in violation of Vehicle Code section 23152, subdivision (a), with a prior conviction for the same offense, a misdemeanor and a crime not involving moral turpitude.

(B) Based on her plea, the court withheld the pronouncement of judgment and placed respondent on conditional and revocable release for 36 months on condition, in part, that she violate no law other than minor traffic infractions, pay fines of \$1,867 plus a payment plan fee of \$35 for a total of \$1,902, enroll in and attend a state-approved multiple offender alcohol program, not drive a motor vehicle unless properly licensed and insured, not drive with a measurable amount of alcohol in her system, submit to a blood alcohol test upon request of an arresting police officer, serve 30 days in the San Bernardino County Jail with credit for one day served, and install an ignition interlock device on her vehicle. She was ordered to surrender by August 16, 2013, to begin her jail sentence. By September 1, 2013, respondent was ordered to begin paying her fine by making her first monthly payment of \$100 and to enroll in the state-approved multiple offender alcohol program by September 1, 2013.

5. (A) The facts and circumstances of respondent's July 2013 conviction for driving while under the influence of alcohol were that, on December 31, 2012, she went to a New Year's Eve party in the Ontario area where she drank beer and vodka. She threw up at the party. At approximately 4:00 a.m., on January 1, 2013, respondent left the party and drove her car. Respondent stopped in a parking lot of a park in Ontario because she had to urinate. She left the car's engine running, opened the door, and squatted next to her car. An officer of the Ontario Police Department drove by the park and noticed respondent's car in the parking lot. The officer turned on the spotlight on his police unit and saw respondent squatting outside of her car.

(B) When contacted by the police officer and asked what she was doing, respondent replied she was "peeing so she could sober up." The officer noticed that respondent had red, watery eyes and a strong odor of alcohol on her breath. Another officer responded to the scene to provide assistance and observed that respondent had slurred speech and seemed very happy despite being detained.

Respondent stated she was certain that her blood alcohol level did not exceed the legal limit because she had thrown up. Respondent then chose to take a preliminary alcohol screening test rather than perform field sobriety tests. According to the preliminary alcohol screening tests, respondent's blood alcohol content was 0.156 and 0.158 percent, which was above the legal limit. Respondent was arrested for driving under the influence of alcohol and for driving with a blood alcohol content of 0.08 percent or greater by weight. Later, the police withdrew a blood sample from respondent but the result of a laboratory analysis of the blood sample was not established by the evidence.

6. On August 16, 2013, respondent appeared in court and surrendered to the custody of the San Bernardino County Sheriff's Department to begin her 30 day jail sentence. She also paid \$100 towards satisfaction of her fine and filed proof that she had enrolled in the alcohol program. By February 2014, she had paid \$600 of the \$1,902 in court-ordered fines and fees. Her next court appearance in San Bernardino County is scheduled for September 15, 2015.

7. Based on Findings 4 – 6 above, on January 1, 2013, respondent used alcohol or ingested an alcoholic beverage or beverages to an extent or in a manner as to be dangerous or injurious to herself, another person, or the public.

Conviction in Los Angeles County

8. (A) On October 21, 2013, before the Superior Court of California, County of Los Angeles, Pasadena Courthouse, in *People v. Elizabeth Alexis Lamont*, Case Number 3PS02710, respondent was convicted on her plea of nolo contendere of driving a vehicle while having 0.08 percent or more, by weight, of alcohol in her blood system, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor and a crime not involving moral turpitude. Respondent admitted having a prior conviction for driving under the influence of alcohol, as set forth in Finding 4 above.

(B) Based on respondent's plea, the court found her guilty, suspended the imposition of sentence, and placed her on summary probation for three years on condition, in part, that she serve 96 hours in the Los Angeles County Jail, pay fines and fees totaling \$1,968, enroll in a SB-38 alcohol education program within 21 days, not operate a motor vehicle with any measurable amount of alcohol or drugs in her blood system, not refuse to take and complete any blood alcohol or chemical drug test, field sobriety test, or preliminary alcohol screening test when requested to do so by any peace officer, and obey all laws and orders of the court. In addition, the court ordered that respondent serve 56 days under house arrest with credit for one day served.

9. The facts and circumstances of respondent's October 21, 2013 conviction were that, in the evening of August 9, 2013, respondent went out with co-workers from her server's job at Black Angus restaurant to Dave & Buster's in Arcadia. She drank alcoholic beverages at the restaurant and bar. At the end of the evening, respondent drove with a friend to Pasadena to get something to eat. At 2:22 a.m., on August 10, 2013, as she was driving in Pasadena, respondent turned the wrong way on a one-way street and drove towards a police unit. Respondent swerved around the police unit and was stopped by officers of the Pasadena Police Department. The officers observed that respondent's eyes were watery and red and that she had the odor of alcohol on her breath and person. She insisted that she had very little to drink. When she performed field sobriety tests, the officers believed that she exhibited signs of impairment or intoxication. She also underwent voluntary preliminary alcohol screening tests which showed that her blood alcohol content was 0.141 and 0.144 percent. Respondent was arrested for driving while under the influence of alcohol. A laboratory test of respondent's blood sample showed that her blood alcohol content was 0.11 percent by weight, which was above the legal limit.

10. On November 13, 2013, the court authorized respondent to receive credit for attending the multiple offender alcohol program in San Bernardino County to satisfy her sentence. On or about April 21, 2014, respondent filed proof with the court that she completed her 56 days of house arrest. From December 18, 2013, through October 15, 2014, respondent paid approximately \$900 towards the court-ordered fines and fees for her conviction by making monthly payments of \$100. Her next court appearance for reviewing her completion of the alcohol program and payment of fines and fees is scheduled for May 4, 2015.

11. Based on Findings 8 – 10 above, on August 10, 2013, respondent used alcohol or ingested an alcoholic beverage or beverages to an extent or in a manner as to be dangerous or injurious to herself, another person, or the public.

Other Evidence

12. (A) For her two convictions, respondent remains enrolled in an 18-month driving under the influence or alcohol education program. On a bi-weekly basis, she receives group and individual counseling in alcohol abuse at the National Council on Alcoholism and Drug Dependence, Inc., in Covina. She has also attended a 12-hour alcohol education class.

(B) Respondent has participated in 26 sessions of Alcoholics Anonymous as part of her sentences. She continues to voluntarily attend one meeting of Alcoholics Anonymous per week either in Covina or Los Angeles. She last attended an Alcoholics Anonymous meeting before the hearing in this matter on October 31, 2014, in the Highland Park area. Respondent does not have a sponsor at Alcoholics Anonymous.

13. (A) Eleven years ago, on or about May 1, 2003, respondent suffered her first conviction for driving under the influence of alcohol. In the Superior Court, County of Los Angeles, respondent was convicted of driving a motor vehicle while having 0.08 percent or more, by weight, of alcohol in her blood system, in violation of Vehicle Code section 23152, subdivision (b), a misdemeanor and a crime not involving moral turpitude. Upon sentencing, she was placed on probation for three years and ordered to serve 60 days in jail, attend six sessions of Alcoholics Anonymous and an alcohol education program, and pay fines and fees. She served six days in custody and completed her jail sentence on a work release program. Respondent successfully completed probation for this prior conviction.

(B) It was not established that, on or about May 1, 2003, respondent was also convicted of driving on a suspended license in violation of Vehicle Code section 14601.5. No evidence was presented on this allegation.

14. (A) Respondent demonstrated remorse and admits to her two convictions in 2013 as well as to her prior conviction for driving under the influence of alcohol in 2002. She claimed that she was sober for a number of years following her prior conviction. Respondent admits that she lacked good judgment by drinking alcoholic beverages and driving when she was twice arrested in 2013. She stated that she only began to take her alcohol problem and the court process seriously after her last conviction in October 21, 2013.

(B) Respondent testified that she has changed her lifestyle and does not drink and drive any longer. Respondent does drink beer on occasion. She testified that she drinks beer on the weekends and that she last drank beer a few weeks before the hearing in this matter.

15. When she applied for her pharmacy technician registration in March 2012, respondent disclosed to the Board that she had been convicted of driving while under the influence of alcohol in 2002. In a letter of explanation, respondent stated that she was arrested after being stopped by the police for speeding. She wrote that she was responsible for her actions, no longer made bad choices "like drinking and driving," and learned from the experience. She also stated that she took drinking and driving "very seriously" and was sober for four years thereafter.

16. Respondent will remain on conditional and revocable release for her San Bernardino County conviction until July 17, 2016, and on summary probation for her Los Angeles County conviction until October 21, 2016. Respondent has not paid her fines and fees. Nor has she completed the alcohol education program for her convictions.

17. In a prior letter dated December 13, 2011, the Pharmacy Technician Process Administrator at UEI College confirmed that respondent started the pharmacy technician program in August 2011 and was expected to graduate in May 2012. At

that time, respondent had a 4.0 grade point average in her classes and perfect attendance. She was described as a leader and a motivated and consistent student.

18. After receiving her pharmacy technician registration, respondent was hired at Santa Maria Pharmacy in or about July 2012. Initially, she performed the duties of a pharmacy technician. She received prescriptions from patients or customers and filled the prescriptions. After a while, her employer at Santa Maria Pharmacy decided that respondent was better suited to processing prescriptions and typing labels for medication containers rather than filling prescriptions. In processing prescriptions and typing labels, respondent performs the duties of a pharmacy clerk in the back area of the pharmacy. There, she calls customers and insurance companies, On occasion, respondent will fill-in at the front of the pharmacy and interact with customers and receive prescriptions from them. Respondent works 35 hours per week at the pharmacy and earns approximately \$10 per hour.

19. Respondent enjoys her job at Santa Maria Pharmacy and needs the income to pay her court-ordered fines and fees and the costs of the mandatory alcohol program. On the weekends, she also works as a server at Black Angus restaurant. She is unable to drive because her driver's license has been suspended as a result of her convictions. To get to work, she obtains rides from a friend or her parents.

20. Respondent is now approximately 31 years old and single. She lives with her parents. She testified that her employer is aware of her convictions and this disciplinary proceeding and that she has never worked at her pharmacy job while under the influence of alcohol. It was not established that respondent ever appeared for work at Santa Maria Pharmacy while under the influence or impaired by alcohol. Respondent testified in a sincere and credible manner.

21. As established by the testimony of Anna Yamada, D.Pharm., a licensed pharmacist and an inspector for the Board, a registered pharmacy technician assists and is supervised by a pharmacist in a retail pharmacy setting. A registered pharmacy technician obtains health and insurance information from patients, receives and processes prescriptions, prints and places labels on medication containers, inventories and stocks medications, and dispenses medications to customers. In addition, a registered pharmacy technician counts medications and fills prescriptions, which are verified by a pharmacist or pharmacist-in-charge. In other words, a registered pharmacy technician has access to medications and drugs at a pharmacy. He or she is expected to use good judgment, to perform his or her duties in a safe manner, and to obey all laws and regulations applicable to the pharmacy setting and the licensed activity. A registered pharmacy technician must be trustworthy, reliable, and accurate and be able to interact with customers and the public

22. Based on Findings 4 – 11 and 21 above, respondent's convictions for driving while under the influence of alcohol were substantially related to the qualifications, functions, or duties of a registered pharmacy technician within the

meaning of California Code of Regulations, title 16, section 1770. Her convictions for driving while under the influence of alcohol evidence to a substantial degree a present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, or welfare

23. The costs of investigation and enforcement of this matter totaled \$3,040, as set forth in the Certification of Prosecution Costs (Exh. 3).

* * * * *

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

LEGAL CONCLUSIONS

1. Grounds exist to discipline respondent's pharmacy technician registration pursuant to Business and Professions Code sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a registered pharmacy technician, based on Findings 4 – 11 and 21 – 22 above.

2. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (k), in that respondent was convicted of more than one misdemeanor involving the use, consumption, or self-administration of alcoholic beverages, based on Findings 4 – 11 above.

3. Grounds exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (h), in that respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to herself, another person, or the public, based on Findings 4 – 11 above. Respondent drank alcoholic beverages, became intoxicated, and drove her car. On one occasion, she was arrested in a public park in the early morning hours. On the other occasion, she drove the wrong way on the one-way street towards a police car.

4. Grounds do not exist to discipline respondent's pharmacy technician registration for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivision (o), in that it was not established that respondent violated, or attempted to violate, directly or indirectly, or assisted in or abetted the violation of,

or conspired to violate, any provision or term of the Pharmacy Law 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, based on Conclusions of Law 1 – 3 above. No evidence or argument was presented on this cause for discipline. Nor was it established what law or regulation governing pharmacy respondent violated under the circumstances of this matter.

5. Grounds exist to direct respondent to pay the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3, in that respondent violated the Pharmacy Law, based on Conclusions of Law 1 – 3 above. The reasonable costs of investigation and enforcement costs in this matter are deemed to be \$1,520 inasmuch as respondent has outstanding financial obligations mandated by the courts for her convictions and has limited means to pay those fines and fees in addition to costs.

6. Discussion—Under Business and Professions Code section 4301, the Board must take action against the holder of a licensee who is guilty of unprofessional conduct. The clear and convincing weight of the evidence in this matter showed that respondent was twice convicted of driving while under the influence of alcohol in the year 2013. On July 17, 2013, she was convicted of driving while under the influence of alcohol and, on October 21, 2013, she was convicted of driving while have 0.08 percent or more, by weight, of alcohol in her blood system. She was arrested for the second offense when she drove the wrong way on a one-way street and drove towards a police unit. Respondent has a prior conviction for the same offense in 2002. Respondent's convictions in 2013 are substantially related to the qualifications, functions, or duties of a Board licensee, and the convictions demonstrated respondent's use of alcohol to a dangerous extent.

When considering the minimum, maximum, or an intermediate penalty is to be imposed in a given case, the Board's Disciplinary Guidelines (Rev. 10/2007) require consideration of the following factors: actual or potential harm to the public or to any consumer; prior disciplinary record or prior warnings; number and/or variety of current violations; number and severity of the acts, offenses, or crimes under consideration; aggravating and mitigating evidence; compliance with terms of any criminal sentence, parole, or probation; overall criminal record; if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Penal Code section 1203.4; time passed since the acts or offenses; whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, respondent had knowledge of or knowingly participated in such conduct; and financial benefit to respondent from the misconduct. No single one or combination of these factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate penalty.

Under the Disciplinary Guidelines, the maximum penalty for a registered pharmacy technician who has committed a violation or violations constituting grounds for discipline is revocation. The minimum penalty is revocation with revocation stayed, 90 days actual suspension, and three years of probation with standard terms and conditions of probation and optional conditions as appropriate.

In this matter, the evidence demonstrated that respondent has no record of prior disciplinary action or warnings, she received no financial benefit from her misconduct, and the public and no consumer was actually harmed by respondent's crimes of driving while under the influence of alcohol. Respondent has complied with the terms and conditions of her probation for her two convictions by completing her jail sentences, making payments on her fines and fees, attending meetings of Alcoholics Anonymous, and enrolling in the mandatory alcohol education program. She has received individual and group counseling as part of her court-ordered alcohol education program.

Notwithstanding the above, respondent remains on probation for her two convictions for driving while under the influence of alcohol and her convictions are recent, both having occurred in 2013. She also has a prior conviction for the same offense in 2002. She has not completed the alcohol education program for her two convictions. She continues to attend meetings of Alcoholics Anonymous, but she does not have a sponsor. Respondent claims to have changed her lifestyle. She stated that she does not drink and drive but that she does drink beer on occasion. In actuality, respondent cannot drive a motor vehicle since her driver's license remains suspended following her arrests and convictions. When she applied for her registration, respondent similarly stated that she had learned her lesson after her 2002 conviction and that she did not drink and drive any longer.

Thus, it was not established by the clear and convincing weight of the evidence that respondent is rehabilitated from her convictions or from her apparent alcohol problem. Considering, however, that respondent works as a pharmacy clerk and performs duties of a pharmacy technician only on occasion, that the evidence showed that respondent has not gone to work while under the influence of alcohol, and that there was no evidence that her use of alcohol affected her job performance at the pharmacy, respondent's violations of the Pharmacy Law did not involve her activities as a registered pharmacy technician. The concern with respondent is that it is not clear that she has really learned her lesson or that she realizes that she has an alcohol problem. Respondent continues to drink beer, albeit on occasion. Based on these circumstances, it is appropriate that respondent be issued a probationary license with appropriate terms and conditions to facilitate her continued rehabilitation from alcohol abuse as well as from her criminal convictions.

* * * * *

WHEREFORE, the following Order is hereby made:

ORDER

Pharmacy technician registration number TCH-123075 and registration rights previously issued by the Board of Pharmacy to respondent Elizabeth Alexis Lamont are revoked, based on Conclusions of Law 1 – 3 above; provided, however, based on Conclusion of Law 6 above, said order of revocation will be stayed and respondent's registration shall be placed on probation for three (3) years under the following terms and conditions:

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

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any premises licensed by the Board, if applicable, in which 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 license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

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

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

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

6. Notice to Employers—During the period of probation, respondent shall notify all present and prospective employers of the Decision in Case Number 5009, and the terms, conditions and restrictions imposed on respondent by the Decision, as follows:

Within thirty (30) days of the effective date of this Decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the Decision in Case Number 5009 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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 direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the Decision in Case Number 5009 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 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 5009 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that 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. Reimbursement of Board Costs—As a condition precedent to successful completion of probation, respondent shall pay to the Board the reasonable costs of investigation and prosecution which is deemed to be \$1,520, as set forth in Conclusion of Law 5 above. Respondent shall make said payments as follows: \$50.93 per month for 30 months. Respondent shall complete making payment of costs six months before the termination of probation. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed by the Board or its designee shall be considered a violation of probation.

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

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

9. Status of License—Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any

period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

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

Upon acceptance of the surrender, respondent shall relinquish 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 70 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 70 hours per calendar month in California, respondent must notify the Board in writing within ten

(10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 70 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 70 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

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

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license.

If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

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

15. Random Drug Screening—Respondent at her own expense, shall participate in random testing, including but not limited to biological fluid testing

(urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation.

Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which 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.


16. Work Site Monitor—Within ten (10) days of the effective date of this Decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site

monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

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

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

Dated: December 1, 2014


Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5009

12 **ELIZABETH ALEXIS LAMONT**
18839 E. Fundale St.
13 Azusa, CA 91702

A C C U S A T I O N

14 **Pharmacy Technician Registration**
15 **No. TCH 123075**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about May 4, 2012, the Board issued Pharmacy Technician Registration No.
23 TCH 123075 to Elizabeth Alexis Lamont (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein, and will expire on
25 December 31, 2015, unless renewed.

26 **JURISDICTION**

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

1

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

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

28

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

5 **REGULATORY PROVISIONS**

6 8. California Code of Regulations, title 16, section 1770, states, in pertinent part:

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

13 **COST RECOVERY**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 ***(Convictions of Substantially Related Crimes)***

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

24 a. On or about October 21, 2013, after pleading *nolo contendere*, Respondent was
25 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
26 [driving while having 0.08% or more, by weight, of alcohol in her blood] in the criminal
27 proceeding entitled *The People of the State of California v. Elizabeth Lamont* (Super. Ct. Los
28 Angeles County, 2013, No. 3PS02710). The Court sentenced Respondent to serve 96 hours

1 in Los Angeles County Jail and placed her on three years probation, with terms and conditions.

2 b. The circumstances surrounding the conviction are that on or about August 10, 2013,
3 the Pasadena Police initiated a traffic enforcement stop after observing Respondent driving the
4 wrong way on a one way street. When the officer approached the driver's door, he could smell the
5 odor of an alcoholic beverage emitting from inside the vehicle. When asked if she had been
6 drinking, Respondent stated, "Very little." While speaking to Respondent, the officer could smell
7 the odor of an alcoholic beverage coming from her breath and person. She was observed to have
8 bloodshot watery eyes. Respondent was asked to complete a standardized field sobriety test and
9 was observed to have signs of impairment and intoxication in each test she performed. During
10 the booking procedure, Respondent submitted to a blood test that resulted in a blood alcohol
11 content level of 0.11%.

12 c. On or about July 17, 2013, after pleading *nolo contendere*, Respondent was convicted
13 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving
14 under the influence of alcohol or drugs] in the criminal proceeding entitled *The People of the*
15 *State of California v. Elizabeth Lamont* (Super. Ct. San Bernardino County, 2013, No.
16 TWV1300944.) The Court sentenced Respondent to serve 30 days in San Bernardino County Jail
17 and ordered pronouncement of judgment withheld and conditional and revocable release granted
18 for a period of 36 months, with terms and conditions.

19 d. The circumstance surrounding the conviction are that on or about January 1, 2013, the
20 Ontario Police observed Respondent's vehicle parked in the middle of a parking lot. When the
21 officer flashed the patrol vehicle spotlight to illuminate the vehicle, he observed the driver's door
22 open and Respondent squatting with her pants down outside the vehicle. As the officer
23 approached the vehicle, Respondent quickly pulled her pants up and got into the driver's seat of
24 the vehicle. The officer noticed a wet puddle outside the driver's door. When asked what she was
25 doing, Respondent stated she was urinating so she could sober up. While speaking to Respondent,
26 the officer could smell a strong odor of an alcoholic beverage coming from her breath and person.
27 She was observed to have bloodshot watery eyes, droopy eyelids, and slurred speech. While at the
28 scene, Respondent submitted to a Preliminary Alcohol Screening test that resulted in a breath

1 alcohol level of 0.15% on the first and second reading. Respondent was subsequently arrested for
2 driving under the influence of alcohol.

3 **SECOND CAUSE FOR DISCIPLINE**

4 ***(Convictions Involving the Consumption of Alcohol)***

5 11. Respondent is subject to disciplinary action under section 4301, subdivision (k), on
6 the grounds of unprofessional conduct, in that, Respondent was convicted of two (2) crimes
7 involving the consumption of alcohol. Complainant refers to and by this reference incorporates,
8 the allegations set forth above in paragraph 10, subparagraph (a) and (c), inclusive, as though set
9 forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 ***(Dangerous Use of Alcohol)***

12 12. Respondent is subject to disciplinary action under section 4301, subdivision (h), on
13 the grounds of unprofessional conduct, in that, on or about August 10, 2013, and January 1, 2013,
14 Respondent used alcohol to an extent or in a manner dangerous or injurious to herself or others
15 when she operated a vehicle while having a blood alcohol content level of 0.08% or higher.
16 Complainant refers to and by this reference incorporates, the allegations set forth above in
17 paragraph 10, subparagraph (b) and (d), inclusive, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

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

20 13. Respondent is subject to disciplinary action under section 4301, subdivision (o), in
21 that Respondent committed acts, of unprofessional conduct and/ or violated provision of the
22 licensing chapter. Complainant refers to and by this reference incorporates, the allegations set
23 forth in above paragraphs 10-12, inclusive, as though set forth fully.

24 **DISCIPLINE CONSIDERATIONS**

25 14. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges, as follows:

27 a. On or about May 1, 2003, Respondent was convicted of one misdemeanor count of
28 violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by

1 weight, of alcohol in her blood] in the criminal proceeding entitled *The People of the State of*
2 *California v. Elizabeth Lamont* (Super. Ct. Los Angeles County, 2003, No. 3JM0084301). The
3 Court sentenced Respondent to serve 60 days in Los Angeles County Jail and placed her on three
4 years probation, with terms and conditions.

5 b. The circumstances surrounding the conviction are that on or about December 29,
6 2002, Respondent drove a vehicle while having 0.08% or more, by weight, of alcohol in her
7 blood.

8 c. On or about May 1, 2003, Respondent was convicted of one misdemeanor count of
9 violating Vehicle Code section 14601.5, subdivision (a) [driving when privilege suspended or
10 revoked] in the criminal proceeding entitled *The People of the State of California v. Elizabeth*
11 *Lamont* (Super. Ct. Los Angeles County, 2003, No. 3JM0156701). The Court placed Respondent
12 on three years probation, with terms and conditions.

13 d. The circumstances surrounding the conviction are that on or about March 5, 2003,
14 Respondent drove a vehicle while her driving privilege was suspended or revoked.

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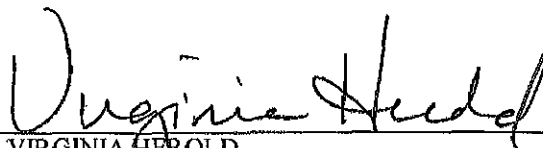
PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 123075, issued to Respondent;
2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/3/14



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