



**California State Board of Pharmacy**  
 2720 Gateway Oaks Drive, Suite 100  
 Sacramento, CA 95833  
 Phone: (916) 518-3100 Fax: (916) 574-8614  
 www.pharmacy.ca.gov

Business, Consumer Services and Housing Agency  
 Department of Consumer Affairs  
 Gavin Newsom, Governor



## APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

**PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES:**

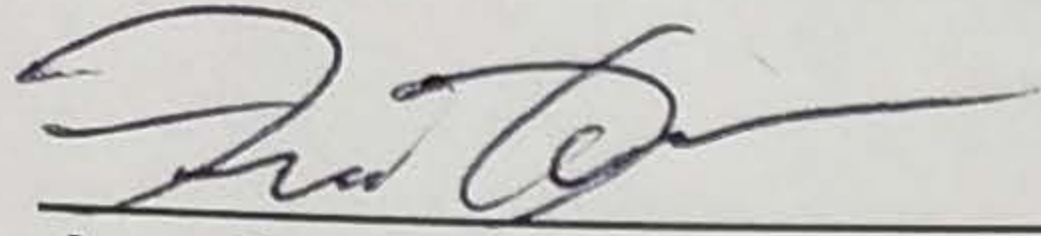
Name of Licensee: Fred Ibarra	Case No. AC 5127
Address of Record: 28040 Murrieta Rd Menifee, Ca 92586	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 5127, I hereby request to surrender my pharmacy technician license, License No. TCH40995. 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, including any outstanding costs.



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

12/03/24

Date

Fred Ibarra

Applicant's Printed Name

TCH40995

Applicant's License Number

Executive Officer's Approval

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) 518-3100, 2720 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. 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 Petition for Reinstatement by:**

**FRED IBARRA, Petitioner**

**Agency Case No. 5127**

**OAH No. 2023090098**

**DECISION**

This matter was a hybrid hearing, both in person and by videoconference, before a quorum of the Board of Pharmacy (Board) on September 12, 2023. Administrative Law Judge Jessica Wall, Office of Administrative Hearings, presided from Sacramento, California.

Kristina T. Jarvis, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Fred Ibarra represented himself.

Evidence was received, the record closed, and the matter submitted for decision on September 12, 2023.

## **FACTUAL FINDINGS**

### **License and Disciplinary History**

1. On September 19, 2002, the Board issued petitioner Pharmacy Technician Registration number TCH 40995 (license). Petitioner's license was revoked on February 6, 2015, as detailed below.

2. On September 14, 2014, the Board's former Executive Officer filed an Accusation against petitioner's license alleging three causes for discipline: (1) conviction of a substantially related crime, (2) illegal possession of a controlled substance, and (3) dangerous use of alcohol. Specifically, the causes for discipline referred to two convictions petitioner sustained in 2013 and 2005.

Most recently, in November 2013, petitioner was convicted of possessing a controlled substance, a felony, and ordered to complete an 18-month drug diversion program. The circumstances underlying this conviction arose in July 2013, when petitioner was detained in the investigation of an assault with a deadly weapon. He admitted to his involvement in the fight and that he had cocaine in his pocket for personal use.

Additionally, in January 2005, petitioner was convicted of driving under the influence of alcohol (DUI), a misdemeanor. The circumstances underlying his conviction arose in December 2004, when police officers stopped petitioner for running a red light and speeding, and he was found to have a blood alcohol concentration nearly double the legal limit. His three-year-old child and the child's mother were also in the car.

Finally, the Accusation listed several of petitioner's prior convictions as disciplinary considerations. Specifically, petitioner was convicted in January 1998 of fighting in a public place, a misdemeanor. He was also convicted in March 1998 of defacing personal property, a misdemeanor.

3. The Board sent the Accusation to petitioner's address of record. Petitioner did not file a Notice of Defense. The Board issued a Default Decision and Order revoking petitioner's license, effective February 6, 2015. By its Default Decision and Order, the Board found the charges and allegations in the Accusation to be true and correct by clear and convincing evidence.

### **Petition and Evidence at Hearing**

4. On March 29, 2023, and August 17, 2023, petitioner signed his Petition for Reinstatement of Certificate Revoked Through Administrative Disciplinary Action (Petition) and submitted it to the Board. Through his Petition and testimony, he explained why he believes the Board should reinstate his license.

5. In his written statement, petitioner explained that his convictions arose during a time in his life in which he "was going through a separation and chose the wrong path." Since his most recent conviction in 2013, petitioner completed the terms of his criminal sentence and had no additional negative interactions with law enforcement.

6. As part of his criminal sentencing, petitioner attended Narcotics Anonymous (NA) and Alcoholics Anonymous (AA) in 2014 and 2015. He testified that AA was useful and helped him a lot because he learned to stay away from the environments that got him in trouble. Petitioner does not know his sobriety date but

estimates it was about five years ago, as he relapsed after he stopped attending AA. He has abstained from all controlled substances and alcohol since then.

7. Petitioner's family and ex-coworkers are his support system. He stopped seeing the friends he affiliated with at the time of his convictions. Rather than using drugs or alcohol, petitioner now exercises, goes for walks, attends church, or engages in other hobbies. He prevents relapse by avoiding any contact with his ex-wife, with whom he shares a 22-year-old son.

8. Following his license revocation in 2015, petitioner worked as a pharmacy clerk for three different pharmacies. He believes that having his license reinstated will offer him additional career opportunities. He also hopes working as a pharmacy technician will help him save for retirement. He does not currently work but intends to start looking for a job next month.

9. Petitioner submitted five letters of support. Four of the authors are pharmacists who worked with petitioner when he was either a pharmacy technician or clerk. Only one author was familiar with the disciplinary action taken against petitioner's license. The authors uniformly describe petitioner as hardworking, caring, and professional. All five authors support the reinstatement of petitioner's license.

## **Analysis**

10. Over a 15-year period, petitioner sustained a series of serious convictions, which reflected poorly on himself and his profession as a whole. Yet over the last decade, petitioner avoided further misconduct and engaged in rehabilitation efforts to achieve and maintain sobriety.

11. Petitioner's letters of support receive great weight. They corroborate petitioner's testimony about his continued work in pharmacies since his license was revoked. The letters further document that the pharmacists with whom petitioner worked think highly of him and his ability to safely practice as a pharmacy technician. Any risk to public safety from petitioner's reinstatement can be addressed by the additional oversight that probation provides. Moreover, further protection will result from the optional probation conditions that require petitioner to abstain from controlled substances and alcohol, along with biological fluid testing to ensure his abstinence.

12. The Board revoked petitioner's license not to punish him, but to ensure public safety. (Bus. & Prof. Code, § 4001.1; *Cornell v. Reilly* (1954) 127 Cal.App.2d 178, 184.) Based on the evidence provided at hearing, the Board can satisfy its goal of public protection by reinstating petitioner's license and subjecting it to appropriate probationary terms as described in the Order below.

## **LEGAL CONCLUSIONS**

1. A Board licensee whose license has been revoked may petition the Board for reinstatement after three years. (Bus. & Prof. Code, § 4309, subd. (a)(1).) Petitioner filed his petition in August 2023, more than three years after his license was revoked. His Petition is timely.

2. Petitioner bears the burden of proving both his rehabilitation and his fitness to practice. (*Housman v. Bd. of Medical Exam'rs* (1948) 84 Cal.App.2d 308.) The standard of proof is clear and convincing evidence to a reasonable certainty. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084.)

3. When deciding a petition, the Board may consider petitioner's activities while the license was in good standing and after the disciplinary action was taken, the offense for which petitioner was disciplined, petitioner's documented rehabilitative efforts, and petitioner's general reputation for truth and professional ability. (Bus. & Prof. Code, § 4309, subd. (d)(1)–(5).) Considering the above criteria, petitioner produced clear and convincing rehabilitation evidence to show he can practice as a pharmacy technician, subject to appropriate probationary conditions, consistent with the public health, safety, and welfare. Therefore, his Petition is granted.

### **ORDER**

It is hereby ordered that the Petition for Reinstatement filed by Fred Ibarra is hereby granted, and petitioner's license shall be reinstated. Petitioner's license shall be reinstated and immediately revoked, with revocation stayed, and petitioner placed on probation for a period of one year on the following terms and conditions:

1. **Obey All Laws:** Petitioner shall obey all state and federal laws and regulations.

Petitioner shall report any of the following occurrences to the Board, in writing, within 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, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime; or
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves petitioner's 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 such occurrence shall be considered a violation of probation.

2. **Report to the Board:** Petitioner 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, Petitioner 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.

3. **Interview with the Board:** Upon receipt of reasonable prior notice, petitioner 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 for two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff:** Petitioner shall timely cooperate with the Board's inspection program and with the Board's monitoring and investigation of petitioner's compliance with the terms and conditions of his probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

5. **Reporting of Employment and Notice to Employers:** During the period of probation, petitioner shall notify all present and prospective employers of the decision in case number 5127 and the terms, conditions, and restrictions imposed on petitioner by the decision, as follows:

Within 30 days of the effective date of this decision, and within 10 days of undertaking any new employment, petitioner shall report to the Board in writing the name, physical address, and mailing address of each of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. Petitioner shall also include the reason(s) for leaving the prior employment. Petitioner shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of petitioner's employer(s) and supervisor(s) and authorizing those employer(s)



or supervisor(s) to communicate with the Board or its designee, concerning petitioner's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking any new employment, petitioner shall cause (a) his direct supervisor, (b) his/ pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5127, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be the petitioner's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, petitioner shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the change acknowledging that he has read the decision in case number 5127, and the terms and conditions imposed thereby.

If petitioner works for or is employed by or through an employment service, petitioner must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in case number 5127, and the terms and conditions imposed thereby in advance of petitioner commencing work at such licensed entity. A record of this notification must be provided to the Board upon request.



Furthermore, within 30 days of the effective date of this decision, and within 15 days of petitioner undertaking any new employment by or through an employment service, petitioner shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he has read the decision in case number 5127, and the terms and conditions imposed thereby. It shall be petitioner's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician license is a requirement or criterion for employment, whether the petitioner is an employee, independent contractor or volunteer.

**6. Notification of Change(s) in Name, Address(es), or Phone**

**Number(s):** Petitioner shall further notify the Board in writing within 10 days of any change in name, residence address, mailing address, e-mail address, or phone number.

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

**7. Probation Monitoring Costs:** Petitioner 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:** Petitioner 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 pharmacy technician license shall be considered a violation of probation.

If petitioner'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 petitioner'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 petitioner cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may relinquish his license, including any indicia of licensure issued by the Board, along with a request to surrender the license. The Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, petitioner 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 petitioner's license history with the Board.

Upon acceptance of the surrender, petitioner shall relinquish his pocket and/or wall license, including any indicia of licensure not previously provided to the Board



within 10 days of notification by the Board that the surrender is accepted if not already provided.

Petitioner may not reapply for any license from the Board for three years from the effective date of the surrender. Petitioner shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board, including any outstanding costs.

10. **Certification Prior to Resuming Work:** Petitioner shall be suspended, and shall not work as a pharmacy technician, until he has been certified as defined by Business and Professions Code section 4202, subdivision (a)(4), has submitted proof of certification to the Board, and has been notified by the Board or its designee that he may begin work. Failure to achieve certification within six months of the effective date shall be considered a violation of probation.

During suspension, petitioner shall not enter any pharmacy area or any portion of any other Board licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Petitioner shall not do any act involving drug selection, selection of stock, manufacturing, compounding, or dispensing; nor shall petitioner manage, administer, or assist any licensee of the Board. Petitioner shall not have access to or control the ordering, distributing, manufacturing, or dispensing of dangerous drugs and/or dangerous devices or controlled substances.

During this suspension, petitioner shall not engage in any activity that requires licensure as a pharmacy technician. Petitioner shall not direct or control any aspect of

the practice of pharmacy or of the manufacture, distribution, wholesaling, or retailing of dangerous drugs and/or dangerous devices, or controlled substances.

Failure to comply with any such suspension shall be considered a violation of probation.

11. **Practice Requirement—Extension of Probation:** Except during periods of suspension, petitioner shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, petitioner must nonetheless comply with all terms and conditions of probation, unless petitioner receives a waiver in writing from the Board or its designee.

If petitioner does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), petitioner shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which petitioner will resume practice at the required level. Petitioner shall further notify the Board in writing within 10 days following the next calendar month during which petitioner practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for petitioner's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-



consecutive months, exceeding 36 months. The Board or its designee may post a notice of the extended probation period on its website.

12. **Violation of Probation:** If petitioner has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over petitioner, and the Board shall provide notice to petitioner that 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. The Board or its designee may post a notice of the extended probation period on its website.

If petitioner violates probation in any respect, the Board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against petitioner during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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.

13. **Completion of Probation:** Upon written notice by the Board or its designee indicating successful completion of probation, petitioner's license will be fully restored.

14. **Drug and Alcohol Testing:** Petitioner, at his own expense, shall participate in testing as directed by the Board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices.

Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the Board or its designee. All testing must be pursuant to an observed testing protocol, unless petitioner is informed otherwise in writing by the Board or its designee. Petitioner may be required to participate in testing for the entire probation period and frequency of testing will be determined by the Board or its designee.

By no later than 30 days after the effective date of this decision, petitioner shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by petitioner; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, petitioner shall fully cooperate with the testing vendor, and with the Board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Petitioner may be required to test on any day, including weekends and holidays. Petitioner is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, petitioner shall seek and receive approval from the Board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, petitioner shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by petitioner. During the period of absence of the area, petitioner shall commence testing protocols with the alternate



vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the Board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the Board or its designee may require petitioner to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by petitioner within 10 days of being requested.

Any of the following shall be considered a violation of probation and shall result in petitioner being immediately suspended from practice as a pharmacy technician until notified by the Board in writing that he may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment. In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken

pursuant to a legitimate prescription and a necessary treatment, the Board or its designee shall inform petitioner of the suspension and inform him to immediately leave work, and shall notify petitioner's employer(s) and work site monitor(s) of the suspension.

During any such suspension, petitioner shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. Petitioner shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall petitioner manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, petitioner shall not engage in any activity that requires the professional judgment of and/or licensure as a pharmacy technician. Petitioner shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

15. **Abstain from Drugs and Alcohol:** Petitioner shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous

drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. Petitioner shall ensure that he is not in the same physical location as individuals who are using illicit substances even if petitioner is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

This Decision shall become effective at 5:00 p.m. on November 29, 2023.

It is so ORDERED on October 30, 2023.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

A handwritten signature in black ink, appearing to read "Seung W. Oh". The signature is written in a cursive style with a large, sweeping initial "S".

Seung W. Oh, Pharm.D.  
Board President



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

In the Matter of the Accusation Against:

**FRED IBARRA**  
**8238 Rosemead Ave., Apt. E.**  
**Pico Rivera, CA 90660**  
**Pharmacy Technician Registration No. TCH**  
**40995**

Respondent.

Case No. 5127

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about September 14, 2014, Complainant Virginia K. Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 5127 against Fred Ibarra (Respondent) before the Board of Pharmacy. (Accusation attached as Exhibit A.)

2. On or about September 19, 2002, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 40995 to Respondent. The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 5127 and will expire on June 30, 2016, unless renewed.

1           3.     On or about September 23, 2014, Respondent was served by Certified and First Class  
2 Mail copies of the Accusation No. 5127, Statement to Respondent, Notice of Defense, Request  
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and  
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code  
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of  
6 record was and is:

7     8238 Rosemead Ave., Apt. E.  
8     Pico Rivera, CA 90660.

9           4.     Service of the Accusation was effective as a matter of law under the provisions of  
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
11 124.

12           5.     Government Code section 11506 states, in pertinent part:

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

18           6.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.  
20 5127.

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

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

26           8.     Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 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. 5127, finds that

1 the charges and allegations in Accusation No. 5127, are separately and severally, found to be true  
2 and correct by clear and convincing evidence.

3 9. Taking official notice of its own internal records, pursuant to Business and  
4 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation  
5 and Enforcement is \$3,387.50 as of November 18, 2014.

6 DETERMINATION OF ISSUES

7 1. Based on the foregoing findings of fact, Respondent Fred Ibarra has subjected his  
8 Pharmacy Technician Registration No. TCH 40995 to discipline.

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

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

13 a. Respondent is subject to disciplinary action Business and Professions Code sections  
14 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16,  
15 section 1770, in that on or about January 20, 2005, he was convicted of one misdemeanor count  
16 of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more,  
17 by weight of alcohol in his blood], a crime substantially related to the practice of a pharmacy  
18 technician.

19 b. Respondent is subject to disciplinary action under Business and Professions Code  
20 section 4301, subdivision (j), for violating Business and Professions Code section 4060 and  
21 Health and Safety Code section 11350, subdivision (a), in that on or about July 21, 2013,  
22 Respondent was in illegal possession of the controlled substance cocaine.

23 c. Respondent is subject to disciplinary action under Business and Professions Code  
24 sections 4301, subdivisions (h) and (o), in that Respondent used alcohol in a manner dangerous to  
25 himself and the public.

26 d. As a disciplinary consideration, on or about March 3, 1998, Respondent was  
27 convicted of one misdemeanor count of violating Penal Code section 594, subdivision (b),  
28 [vandalism: deface property].



1 e. As a disciplinary consideration, on or about January 7, 1998, Respondent was  
2 convicted of one misdemeanor count of violating Penal Code section 415, subdivision (1),  
3 [fighting/challenging in a public place].

4 ORDER


5 IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 40995, heretofore  
6 issued to Respondent Fred Ibarra, is revoked.

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

11 This Decision shall become effective on February 6, 2015.

12 It is so ORDERED January 7, 2015.

13 BOARD OF PHARMACY  
14 DEPARTMENT OF CONSUMER AFFAIRS  
15 STATE OF CALIFORNIA

16 By   
17 STAN C. WEISSER  
18 Board President

18 51645087.DOC  
19 DOJ Matter ID:LA2014511259

20 Exhibit A: Accusation  
21  
22  
23  
24  
25  
26  
27  
28

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 M. TRAVIS PEERY  
Deputy Attorney General  
4 State Bar No. 261887  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
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7 *Attorneys for Complainant*

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

10 In the Matter of the Accusation Against:

Case No. 5127

11 **FRED IBARRA**  
12 8238 Rosemead Ave., Apt. E.  
13 Pico Rivera, CA 90660

**ACCUSATION**

14 Pharmacy Technician Registration  
15 No. TCH 40995

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about September 19, 2002, the Board of Pharmacy (Board) issued Pharmacy  
22 Technician Registration No. TCH 40995 to Fred Ibarra (Respondent). The Pharmacy Technician  
23 Registration was in full force and effect at all times relevant to the charges brought herein and  
24 will expire on June 30, 2016, unless renewed.

25 **JURISDICTION**

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





1 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2  
2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that  
3 division, from taking disciplinary action against a licensee or from denying a license for  
4 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a  
5 record pertaining to an arrest."

6 8. Section 4060 of the Code provides in pertinent part, that no person shall possess any  
7 controlled substance, except that furnished to a person upon the prescription of a physician,  
8 dentist, podiatrist, optometrist, veterinarian, or other authorized prescriber.

9 9. Section 4301 states, in pertinent part:

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

13 . . . .

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

19 . . . .

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

22 . . . .

23 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
24 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
26 substances or of a violation of the statutes of this state regulating controlled substances or  
27 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
28 record of conviction shall be conclusive evidence only of the fact that the conviction occurred,

1 The board may inquire into the circumstances surrounding the commission of the crime, in order  
2 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
3 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
4 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
5 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
6 of this provision. The board may take action when the time for appeal has elapsed, or the  
7 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
8 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
9 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
10 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
11 indictment.

12 . . . .  
13 “(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
14 violation of or conspiring to violate any provision or term of this chapter or of the applicable  
15 federal and state laws and regulations governing pharmacy, including regulations established by  
16 the board or by any other state or federal regulatory agency.”

17 10. Health and Safety Code Section 11350, subdivision (a) makes it a crime in this  
18 state to possess any controlled substance, unless upon the written prescription of a physician or  
19 other authorized prescriber.

20 **REGULATORY PROVISIONS**

21 11. California Code of Regulations, title 16, section 1770 states, in pertinent part:  
22 "For the purpose of denial, suspension, or revocation of a personal or facility license  
23 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
24 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
25 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
26 licensee or registrant to perform the functions authorized by his license or registration in a manner  
27 consistent with the public health, safety, or welfare."

28 ///

1 COST RECOVERY

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

6 CONTROLLED SUBSTANCE

7 13. "Cocaine," is a Schedule II controlled substance as designated by the Health and  
8 Safety Code section 11055, subdivision (b)(6) and is categorized as a dangerous drug pursuant to  
9 section 4022.

10 FIRST CAUSE FOR DISCIPLINE

11 (Conviction of a Substantially Related Crime)

12 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
13 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
14 Respondent has been convicted of a crime substantially related to the qualifications, functions or  
15 duties of a pharmacy technician, as follows:

16 a. On or about January 20, 2005, Respondent was convicted of one misdemeanor count  
17 of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more,  
18 by weight of alcohol in his blood] in the criminal case entitled *The People of the State of*  
19 *California v. Fred Ibarra* (Super. Ct. L.A County 2004, No. 4DW09337-01). The Court  
20 sentenced Respondent to serve 2 days in Los Angeles County Jail and placed him on 36 months  
21 probation, with terms and conditions. The circumstances surrounding the conviction are that on  
22 or about December 11, 2004, Respondent was pulled over by a Bell Police Department officer for  
23 not stopping at a red light and exceeding the speed limit. Upon contacting Respondent, the  
24 officer noticed that there were two additional occupants in the vehicle: Respondent's three year  
25 old son and the child's mother. The officer observed that Respondent's eyes were bloodshot,  
26 watery, and sleepy-like and that his speech was thick, slow, and slurred. The officer also noticed  
27 that Respondent's breath and person smelled of an alcoholic beverage. Respondent admitted to  
28 the officer that he had consumed four 12 ounce "Bud Light" beers earlier in the night.



1 Respondent submitted to a breath test, the results of which showed a blood alcohol content of  
2 .14% and .15%. Respondent was arrested for, and subsequently charged with, violating Vehicle  
3 Code section 23152, subdivision (b) [driving under the influence of alcohol], Vehicle Code  
4 section 23152, subdivision (b) [driving while having 0.08% or more, by weight of alcohol in his  
5 blood], and Penal Code section 273A, subdivision (a) [child endangerment].

6 **SECOND CAUSE FOR DISCIPLINE**

7 **(Illegal Possession of a Controlled Substances)**

8 15. Respondent is subject to disciplinary action under section 4301, subdivision (j) for  
9 violating section 4060 and Health and Safety Code section 11350, subdivision (a) in that on or  
10 about July 21, 2013, Respondent was in illegal possession of the controlled substance cocaine.

11 The circumstances are as follows:

12 a. On or about November 1, 2013, Respondent plead guilty to one felony count of  
13 violating Health and Safety Code section 11350, subdivision (a) [possession of a controlled  
14 substance- Cocaine] in the criminal case entitled *The People of the State of California v. Fred*  
15 *Ibarra* (Super. Ct. L.A County 2013, No. VA131278). The Court placed respondent on deferred  
16 entry of judgment for 18 months pending Respondent's completion of a drug diversion program.  
17 The circumstances underlying the criminal charge are that on or about July 21, 2013, during an  
18 investigation of an assault with a deadly weapon at King Taco Restaurant in Maywood, Los  
19 Angeles County Sheriff's Department officers detained and ordered several male Hispanics,  
20 including Respondent, to stay on the ground. Respondent had blood stains on his neck and left  
21 hand, was uncooperative, and attempted to stand up several times. Respondent was escorted to  
22 the patrol vehicle pending further investigation into the fight. While being escorted to the patrol  
23 vehicle, Respondent admitted that he was involved in the fight. Respondent also admitted that he  
24 had Cocaine in his front right pant pocket for his personal use. The officer recovered a plastic  
25 bindle from Respondent's right front pant pocket, containing an off-white powdery substance  
26 resembling Cocaine. Respondent was subsequently arrested for violating Health and Safety Code  
27 section 11350, subdivision (a) [possession of a narcotic controlled substance-Cocaine].

28 ///

1 THIRD CAUSE FOR DISCIPLINE

2 (Dangerous Use of Alcohol)

3 16. Respondent is subject to disciplinary action under sections 4301, subdivisions (h) and  
4 (o), in that Respondent used alcohol in a manner dangerous to himself and the public, as follows:

5 a. On or about December 11, 2004, Respondent drove a vehicle, while having 0.08% or  
6 more, by weight of alcohol in his blood. Complainant refers to, and by this reference  
7 incorporates, the allegations set forth above in paragraph 14, subparagraph (a), as though set forth  
8 fully.

9 DISCIPLINARY CONSIDERATION

10 17. In order to determine the degree of discipline, if any to be imposed on Respondent,  
11 Complainant alleges the following:

12 a. On or about March 3, 1998, Respondent was convicted of one misdemeanor count of  
13 violating Penal Code section 594, subdivision (b) [vandalism: deface property] in the criminal  
14 case entitled *The People of the State of California v. Fred Ibarra* (Super. Ct. L.A County 1998,  
15 No. 7SE04796). The circumstances surrounding the conviction are that in or about January 1998,  
16 Respondent maliciously defaced, damaged or destroyed real or personal property belonging to  
17 another.

18 b. On or about January 7, 1998, Respondent was convicted of one misdemeanor count  
19 of violating Penal Code section 415, subdivision (1) [fighting/challenging in a public place] in the  
20 criminal case entitled *The People of the State of California v. Fred Ibarra* (Super. Ct. L.A County  
21 1998, No. 7SE05397-02). The Court sentenced Respondent to serve 1 day in Los Angeles  
22 County Jail and placed him on 1 year probation, with terms and conditions. The circumstances  
23 surrounding the conviction are that on or about November 29, 1997, Respondent was observed by  
24 Huntington Park Police Department officers to be fighting with 5-6 other males outside of a large  
25 house party.

26 ///

27 ///

28 ///

PRAYER

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

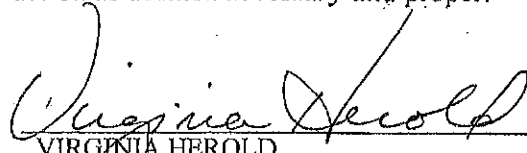
1. Revoking or suspending Pharmacy Technician Registration No. TCH 40995, issued to Fred Ibarra;

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

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

DATED: \_\_\_\_\_

9/24/14



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