



**California State Board of Pharmacy**  
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
 DEPARTMENT OF CONSUMER AFFAIRS  
 GOVERNOR EDMUND G. BROWN JR.

2016 DEC 19 AM 7:24

### APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Racine Barragan</u>	Case No. <u>AC5357</u>
Address of Record: <u>15323 1/2 S. San Pedro St.</u> <u>Gardena, CA 90248</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC5357, I hereby request to surrender my pharmacy technician license, License No. 60484. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

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

Applicant's Signature

Executive Officer's Approval

12/15/16  
 Date

12/19/16  
 Date

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

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

In the Matter of the Accusation Against:

RAECINE ORA BARRAGAN,

Respondent.

Case No. 5351

OAH No. 2015110316

**DECISION AND ORDER**

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

This decision shall become effective at 5:00 p.m. on November 2, 2016.

It is so ORDERED on October 3, 2016.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
Amy Gutierrez, Pharm.D.  
Board President

BEFORE THE  
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In the Matter of the Accusation Against:

RAECINE ORA BARRAGAN,

Respondent.

Case No. 5351

OAH No. 2015110316

**CORRECTED PROPOSED DECISION**

The hearing in the above-captioned matter took place in Los Angeles on June 20, 2016, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH). Complainant Virginia Herold was represented by Anthony Lopez, Jr., Deputy Attorney General. Respondent appeared with her attorney, Tracy Green.

Evidence was received, the case was argued, and the matter submitted for decision on the hearing date. The ALJ thereafter issued his proposed decision, on July 19, 2016.

On August 2, 2016, Lisa Chullino, an Enforcement Analyst for the Board of Pharmacy, contacted the presiding administrative law judges of the Los Angeles branch of OAH, requesting a correction to the proposed decision. She correctly pointed out that Legal Conclusion 4(C) stated that the costs requested by Complainant were reasonable, but should be paid in installments, but no order or condition of probation was set forth on the matter of costs. Ms. Chullino was advised by a phone message and a later conversation with Nancy Beezy Micon, Presiding Administrative Law Judge, that the request for correction had to be served on Respondent, and that Respondent was entitled to 10 days to respond to the request.

On August 19, 2016, Respondent's attorney was served with the request for correction. No objection was made by Respondent's counsel. Therefore, this Corrected Proposed Decision is issued. Legal Conclusion 4(C) has been modified, and a new probation condition 7 has been added, pertaining to payment of costs.

Based on the forgoing, and the evidence and argument heard on June 20, 2016, the ALJ hereby makes his factual findings, legal conclusions, and order.

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## FACTUAL FINDINGS

### *The Parties, and Jurisdiction*

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

2. On February 5, 2005, the Board issued Pharmacy Technician Registration number TCH 60484 to Respondent. The registration will expire on October 31, 2016, absent further action.

3. Following service of the Accusation, Respondent filed a Notice of Defense, thereby requesting a hearing. All jurisdictional requirements have been met.

### *The Incident on June 22, 2013*

4. On June 23, 2013, Los Angeles County Sheriff's deputies were called to the place where Respondent was living with her boyfriend because of alleged domestic violence.

5. (A) The exact nature of the circumstances is less than clear, as much of the evidence comes from a police report, and Respondent contests some of the key statements contained in the report. It can be determined that the deputies arrested Respondent's boyfriend for domestic violence, and they arrested her for being under the influence of heroin.

(B) The arrest of Respondent was based, in part, on her alleged admission that she had smoked heroin earlier that night. The admission was allegedly made in the early morning hours, after Respondent had been questioned by the deputies for at least 90 minutes. She asserts that her former boyfriend instigated the claims against her. She testified that one of the deputies accused her of having used heroin, but that she had not. She further testified that deputies threatened to have the Department of Children and Family Services investigate the matter, tacitly threatening to remove her child from her.

(C) The District Attorney did not file any charges against Respondent arising out of the June 23, 2013 incident. Her boyfriend was prosecuted.

### *Respondent's Conviction*

6. (A) On November 13, 2013, Respondent was convicted of two misdemeanor crimes in the Superior Court of California, County of Los Angeles. On that day Respondent pled nolo contendere to one count of violating Vehicle Code section 12500, subdivision (a), driving without a valid license. She also pled nolo contendere to one count of violating Health and Safety Code section 11364.1, subdivision (a)(1), possession of a smoking device, one that could be used to smoke a controlled substance.

(B) The court suspended imposition of sentence, and placed Respondent on one year of summary probation for the violation of the Vehicle Code, and two years summary probation for possession of the smoking device. Probation was on the condition that she pay fines, penalties, fees, and assessments totaling \$614. In lieu of the fine, Respondent was given the option of performing 76 hours of community service. She was further required to not drive without a valid driver's license and insurance, and she was required to attend 10 Narcotics Anonymous (NA) meetings.

(C) The facts and circumstances of the crime are that Respondent was driving her car on September 13, 2013, when she was stopped by a Sheriff's Deputy because she was driving with a broken side mirror. When he checked on the status of her driver's license, he discovered it was expired. She consented to a search of her vehicle, and she left her purse in the car while the deputy performed the search. He found a glass pipe, of the type commonly used to smoke illegal drugs, in her purse. Respondent admitted it was hers.

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

#### *Respondent's Drug Use and Rehabilitation*

7. While Respondent denied that she had smoked heroin on June 22, 2013, and denied admitting such to the deputies that detained her, she did not deny that she was using drugs in 2013. Her use of illegal drugs, including heroin, is substantially related to the duties, qualifications, and functions of a pharmacy technician.

8. Respondent testified that personal issues, including being forced to give a child up for adoption, had prompted her drug use. She entered an outpatient program and participated in it from April 2013—before the incident with her boyfriend, and before her arrest—until July 1, 2014. For part of that time she was on disability.

9. Respondent still attends NA meetings, one or two per week. She has been under the care of a psychiatrist, who has prescribed anti-depressants to her. She supports herself and a child from her earnings at Walgreens, where she has worked since she was licensed in 2005. She is at the top of her paygrade, making \$19.17 per hour.

10. Respondent's mother testified on Respondent's part in a frank manner. She described her daughter as having made great strides in the past two years. When Respondent was using drugs, her mother wanted little to do with her, and placed little credence in what Respondent told her. Respondent's mother was clear that things have changed for the better; that she has come to trust her daughter again, and she is glad to have Respondent around her house.

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*Costs*

11. The Board has incurred costs of prosecution in the amount of \$ 3,125, which costs are reasonable on their face.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, because of her conviction of a crime or crimes substantially related to the duties, qualifications, and functions of a pharmacy technician, based on Factual Finding 6.

2. (A) Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), because she has used drugs in a manner dangerous or to herself or others, based on Factual Findings 6, 7, and 10.

(B) Cause was not established to discipline Respondent's registration pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), for allegedly smoking heroin on the night of November 22-23, 2013. In this regard, Respondent's version of events in is accepted over the statements attributed to her in the police report. The failure to prosecute the matter supports this Conclusion as well

3. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j), because she violated statutes regulating controlled substances and dangerous drugs, based on Factual Findings 6, 7, and 10.

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

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

prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a [licensee] engaged in relatively innocuous conduct.” (*Id.*, footnote omitted.)

(C) The Board's costs exceed \$3,100. (Factual Finding 11.) Respondent is a single parent, making approximately \$ 766 per week before taxes.<sup>1</sup> Plainly, her ability to pay such a large amount of money is limited. The total amount billed in this case is reasonable. But, given all the facts and circumstances of this case, and Respondent’s limited resources, she should be allowed to make payment in installments. It should be noted that the Board’s standard language for costs reimbursement has been modified, to delete the sentence which states, in essence, that Respondent must pay the costs even if she were to file bankruptcy. That language is omitted, as it is contrary to applicable law.<sup>2</sup>

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

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record, including level of compliance with disciplinary order(s).
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).
5. Number and/or variety of current violations.
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
7. Aggravating evidence.
8. Mitigating evidence.
9. Rehabilitation evidence.
10. Compliance with terms of any criminal sentence, parole, or probation.
11. Overall criminal record.
12. If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
13. Time passed since the act(s) or offense(s).

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<sup>1</sup> See Factual Finding 9. The calculation here assumes a 40 hour work week.

<sup>2</sup> The Federal courts have concluded that the costs imposed by the California State Bar in a disciplinary proceeding are dischargeable under 11 U.S.C. 523 (a)(7), in that they are not a fine, but in compensation of actual pecuniary loss. (*In Re Taggart* (9th Cir. 2001) 249 F.3d 987.) It is plain that section 125.3 is designed to compensate licensing agencies for the pecuniary loss suffered when they must pursue a disciplinary action. (*Oranen v. State Bd. of Chiropractic Examiners* (1999) 77 Cal.App.4th 258, 262, describing section 125.3 as a cost “reimbursement” statute.) Hence, it must be concluded that such costs ordered under section 125.3 or similar statutes are dischargeable.

14. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
15. Financial benefit to the respondent from the misconduct.

6. Applying the criteria, it is concluded that there was no actual harm to the public or a consumer. There are two convictions, one a serious one, but they are now over two and one-half years old. Respondent has no prior discipline, warnings, or admonishments. To be sure, use of dangerous drugs is a serious matter. There is little mitigating evidence, but there is evidence of rehabilitation on Respondent's part. She has complied with the terms of her probation, and is no longer on probation. Respondent's wrongdoing has been intentional, but it did not bring her a financial benefit.

7. (A) The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) It appears that a probationary license would be sufficient to protect the public.

(B) While the Board's disciplinary guidelines indicate that a 90 day suspension should be ordered in most cases where probation is imposed, that would be unduly punitive in this case, and a suspension will not be ordered. And, it does not appear that recertification is necessary given that Respondent has been in good standing and employed full time for over a decade. The optional terms pertaining to drug and alcohol screening, attendance at AA meetings, and complete abstinence have been included. While they can be burdensome in terms of the time and money expended in compliance, they are necessary for public protection.

#### ORDER

Pharmacy technician registration number TCH 60484, issued to Respondent Raecine Ora Barragan is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

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

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment



- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy technician's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

**2. 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.

**3. 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.

**4. 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 her probation. Failure to cooperate shall be considered a violation of probation.

**5. Notice to Employers:** During the period of probation, Respondent shall notify all present and prospective employers of the decision in this case, number 5351 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 her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that 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 her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5086 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that 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.

**6. 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.

**7. Payment of Costs of Investigation and Prosecution:** As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$ 3,125. Respondent shall make said payments as follows: \$90 per month, beginning 30 days after the effective date of this decision, with the balance to be paid 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 shall be considered a violation of probation.

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

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

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

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

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

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

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

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of

the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

**12. 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.

**13. 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 he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

#### **14. Abstain from Drugs and Alcohol Use**

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 he or 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.

#### **15. Prescription Coordination and Monitoring of Prescription Use**

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental illness, and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or

consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

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

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

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

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

August 30, 2016

DocuSigned by:  
*Joseph D. Montoya*  
F077560D88CB41E...

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

## **PROPOSED DECISION**



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

In the Matter of the Accusation Against:

RAECINE ORA BARRAGAN,

Respondent.

Case No. 5351

OAH No. 2015110316

**PROPOSED DECISION**

The hearing in the above-captioned matter took place in Los Angeles on June 20, 2016, before Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings. Complainant Virginia Herold was represented by Anthony Lopez, Jr. Deputy Attorney General. Respondent appeared with her attorney, Tracy Green.

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

**FACTUAL FINDINGS**

*The Parties, and Jurisdiction*

1. Complainant filed the Accusation against Respondent while acting in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
2. On February 5, 2005, the Board issued Pharmacy Technician Registration number TCH 60484 to Respondent. The registration will expire on October 31, 2016, absent further action.
3. Following service of the Accusation, Respondent filed a Notice of Defense, thereby requesting a hearing. All jurisdictional requirements have been met.

*The Incident on June 22, 2013*

4. On June 23, 2013, Los Angeles County Sheriff's deputies were called to the place where Respondent was living with her boyfriend because of alleged domestic violence.

5. (A) The exact nature of the circumstances is less than clear, as much of the evidence comes from a police report, and Respondent contests some of the key statements contained in the report. It can be determined that the deputies arrested Respondent's boyfriend for domestic violence, and they arrested her for being under the influence of heroin.

(B) The arrest of Respondent was based, in part, on her alleged admission that she had smoked heroin earlier that night. The admission was allegedly made in the early morning hours, after Respondent had been questioned by the deputies for at least 90 minutes. She asserts that her former boyfriend instigated the claims against her. She testified that one of the deputies accused her of having used heroin, but that she had not. She further testified that deputies threatened to have the Department of Children and Family Services investigate the matter, tacitly threatening to remove her child from her.

(C) The District Attorney did not file any charges against Respondent arising out of the June 23, 2013 incident. Her boyfriend was prosecuted.

#### *Respondent's Conviction*

6. (A) On November 13, 2013, Respondent was convicted of two misdemeanor crimes in the Superior Court of California, County of Los Angeles. On that day Respondent pled nolo contendere to one count of violating Vehicle Code section 12500, subdivision (a), driving without a valid license. She also pled nolo contendere to one count of violating Health and Safety Code section 11364.1, subdivision (a)(1), possession of a smoking device, one that could be used to smoke a controlled substance.

(B) The court suspended imposition of sentence, and placed Respondent on one year of summary probation for the violation of the Vehicle Code, and two years summary probation for possession of the smoking device. Probation was on the condition that she pay fines, penalties, fees, and assessments totaling \$614. In lieu of the fine, Respondent was given the option of performing 76 hours of community service. She was further required to not drive without a valid driver's license and insurance, and she was required to attend 10 Narcotics Anonymous (NA) meetings.

(C) The facts and circumstances of the crime are that Respondent was driving her car on September 13, 2013, when she was stopped by a Sheriff's Deputy because she was driving with a broken side mirror. When he checked on the status of her driver's license, he discovered it was expired. She consented to a search of her vehicle, and she left her purse in the car while the deputy performed the search. He found a glass pipe, of the type commonly used to smoke illegal drugs, in her purse. Respondent admitted it was hers.

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

### *Respondent's Drug Use and Rehabilitation*

7. While Respondent denied that she had smoked heroin on June 22, 2013, and denied admitting such to the deputies that detained her, she did not deny that she was using drugs in 2013. Her use of illegal drugs, including heroin, is substantially related to the duties, qualifications, and functions of a pharmacy technician.

8. Respondent testified that personal issues, including being forced to give a child up for adoption, had prompted her drug use. She entered an outpatient program and participated in it from April 2013—before the incident with her boyfriend, and before her arrest—until July 1, 2014. For part of that time she was on disability.

9. Respondent still attends NA meetings, one or two per week. She has been under the care of a psychiatrist, who has prescribed anti-depressants to her. She supports herself and a child from her earnings at Walgreens, where she has worked since she was licensed in 2005. She is at the top of her paygrade, making \$19.17 per hour.

10. Respondent's mother testified on Respondent's part in a frank manner. She described her daughter as having made great strides in the past two years. When Respondent was using drugs, her mother wanted little to do with her, and placed little credence in what Respondent told her. Respondent's mother was clear that things have changed for the better; that she has come to trust her daughter again, and she is glad to have Respondent around her house.

### *Costs*

11. The Board has incurred costs of prosecution in the amount of \$ 3,125, which costs are reasonable on their face.

## LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, because of her conviction of a crime or crimes substantially related to the duties, qualifications, and functions of a pharmacy technician, based on Factual Finding 6.

2. (A) Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), because she has used drugs in a manner dangerous or to herself or others, based on Factual Findings 6, 7, and 10.

(B) Cause was not established to discipline Respondent's registration pursuant to Business and Professions Code sections 4300 and 4301, subdivision (h), for allegedly

smoking heroin on the night of November 22-23, 2013. In this regard, Respondent's version of events is accepted over the statements attributed to her in the police report. The failure to prosecute the matter supports this Conclusion as well.

3. Cause exists to discipline Respondent's registration for unprofessional conduct pursuant to Business and Professions Code sections 4300 and 4301, subdivision (j), because she violated statutes regulating controlled substances and dangerous drugs, based on Factual Findings 6, 7, and 10.

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

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

(C) The Board's costs exceed \$3,100. (Factual Finding 11.) Respondent is a single parent, making approximately \$ 766 per week before taxes.<sup>1</sup> Plainly, her ability to pay such a large amount of money is limited. The total amount billed in this case is reasonable. But, given all the facts and circumstances of this case, and Respondent's limited resources, she should be allowed to make payment in installments.

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

1. Actual or potential harm to the public.
2. Actual or potential harm to any consumer.
3. Prior disciplinary record, including level of compliance with disciplinary order(s).
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s).

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<sup>1</sup> See Factual Finding 9. The calculation here assumes a 40 hour work week.

5. Number and/or variety of current violations.
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration.
7. Aggravating evidence.
8. Mitigating evidence.
9. Rehabilitation evidence.
10. Compliance with terms of any criminal sentence, parole, or probation.
11. Overall criminal record.
12. If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code.
13. Time passed since the act(s) or offense(s).
14. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct.
15. Financial benefit to the respondent from the misconduct.

6. Applying the criteria, it is concluded that there was no actual harm to the public or a consumer. There are two convictions, one a serious one, but they are now over two and one-half years old. Respondent has no prior discipline, warnings, or admonishments. To be sure, use of dangerous drugs is a serious matter. There is little mitigating evidence, but there is evidence of rehabilitation on Respondent's part. She has complied with the terms of her probation, and is no longer on probation. Respondent's wrongdoing has been intentional, but it did not bring her a financial benefit.

7. (A) The purpose of proceedings of this type are to protect the public, and not to punish an errant licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784-786; *Bryce v. Board of Medical Quality Assurance* (1986) 184 Cal.App.3d 1471, 1476.) It appears that a probationary license would be sufficient to protect the public.

(B) While the Board's disciplinary guidelines indicate that a 90 day suspension should be ordered in most cases where probation is imposed, that would be unduly punitive in this case, and a suspension will not be ordered. And, it does not appear that recertification is necessary given that Respondent has been in good standing and employed full time for over a decade. The optional terms pertaining to drug and alcohol screening, attendance at AA meetings, and complete abstinence have been included. While they can be burdensome in terms of the time and money expended in compliance, they are necessary for public protection.

#### ORDER

Pharmacy technician registration number TCH 60484, issued to Respondent Raecine Ora Barragan is revoked; however the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

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

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy technician's registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

**2. 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.

**3. 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.

**4. 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 her probation. Failure to cooperate shall be considered a violation of probation.

**5. Notice to Employers:** During the period of probation, Respondent shall notify all present and prospective employers of the decision in this case, number 5351 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 her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that 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 her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5086 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, Respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5086 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that 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.

**6. 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.

**7. 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.

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

Upon acceptance of the surrender, Respondent shall relinquish 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.

**9. 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.

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

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of



the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

**11. 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.

**12. 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 he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

### **13. Abstain from Drugs and Alcohol Use**

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 he or 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.

### **14. Prescription Coordination and Monitoring of Prescription Use**

Within thirty (30) days of the effective date of this decision, respondent shall submit to the board, for its prior approval, the name and qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's history with the use of alcohol, controlled substances, and/or dangerous drugs, and/or of mental illness, and who will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved practitioner shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the practitioner to communicate with the board about respondent's treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of probation regarding respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances. The board may require that the single coordinating physician, nurse practitioner, physician assistant or psychiatrist be a specialist in addictive medicine, or

consult a specialist in addictive medicine. Should respondent, for any reason, cease supervision by the approved practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of respondent's choice to the board or its designee for its prior approval. Failure to timely submit the selected practitioner or replacement practitioner to the board for approval, or to ensure the required reporting thereby on the quarterly reports, shall be considered a violation of probation.

If at any time an approved practitioner determines that respondent is unable to practice safely or independently as a pharmacist, the practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed.

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

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

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

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

July 19, 2015

DocuSigned by:

*Joseph D. Montoya*

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

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7

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

12 In the Matter of the Accusation Against:

Case No. 5351

13 **RAECINE ORA BARRAGAN**  
21328 Conradi Avenue  
Torrance, CA 90502

**ACCUSATION**

14 Pharmacy Technician Registration No. TCH  
60484

15 Respondent.

16  
17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 8, 2005, the Board issued Pharmacy Technician Registration  
23 No. TCH 60484 to Raecine Ora Barragan (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 October 31, 2016, 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 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
2 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
3 substances or of a violation of the statutes of this state regulating controlled substances or  
4 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
5 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
6 The board may inquire into the circumstances surrounding the commission of the crime, in order to  
7 fix the degree of discipline or, in the case of a conviction not involving controlled substances or  
8 dangerous drugs, to determine if the conviction is of an offense substantially related to the  
9 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
10 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
11 of this provision. The board may take action when the time for appeal has elapsed, or the  
12 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
13 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
14 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
15 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
16 indictment. . . ."

#### 17 REGULATORY PROVISION

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

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

#### 25 DRUG STATUTE

26 8. Section 4060 states:

27 "A person shall not possess any controlled substance, except that furnished to a person upon  
28 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor

1 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-  
2 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician  
3 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a  
4 pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the  
5 possession of any controlled substance by a manufacturer, wholesaler, third-party logistics  
6 provider, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
7 naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock  
8 in containers correctly labeled with the name and address of the supplier or producer.

9 "This section does not authorize a certified nurse-midwife, a nurse practitioner, a physician  
10 assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

#### 11 COST RECOVERY

12 9. Section 125.3 provides that the Board may request the administrative law judge to  
13 direct a licensee found to have committed a violation or violations of the licensing act to pay a  
14 sum not to exceed the reasonable costs of the investigation and enforcement of the case.

#### 15 CONTROLLED SUBSTANCE / DANGEROUS DRUG

16 10. Heroin, a semisynthetic drug derived from morphine, is a Schedule I controlled  
17 substance as designated by Health and Safety Code section 11054(c)(11).

#### 18 FIRST CAUSE FOR DISCIPLINE

##### 19 (Dangerous Use of Controlled Substance - Heroin)

20 11. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision  
21 (h), on the grounds of unprofessional conduct, in that on or about June 22, 2013, Respondent  
22 administered Heroin, a controlled substance, to herself to the extent or in a manner to be  
23 dangerous or injurious to herself or others. The circumstances are as follows:

24 a. On or about June 23, 2013, at 0255 hours, law enforcement officers responded to a  
25 domestic violence incident wherein Respondent and her boyfriend were involved in an escalated  
26 verbal to physical altercation. Respondent attempted to physically stop her boyfriend from  
27 leaving their residence, she grabbed him at the back of his neck with her hand. Respondent  
28 admitted that she "smoked a little bit of Heroin around 11 o'clock tonight [6/22/2013]."



1 **SECOND CAUSE FOR DISCIPLINE**

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

3 12. Respondent is subject to disciplinary action under sections 4300 and 4301,  
4 subdivision (I), in conjunction with California Code of Regulations, title 16, section 1770, on the  
5 grounds of unprofessional conduct, in that on or about November 15, 2013, Respondent was  
6 convicted of a crime substantially related to the qualifications, functions or duties of a registrant  
7 which to a substantial degree evidences her present or potential unfitness to perform the functions  
8 authorized by her registration in a manner consistent with the public health, safety, or welfare. The  
9 circumstances are as follows:

10 a. On or about November 15, 2013, after pleading nolo contendere, Respondent was  
11 convicted of two misdemeanor counts, Count 1, violating Vehicle Code section 12500(a)  
12 [unlicensed driver] and Count 2, violating Health and Safety Code section 11364.1(a)(1)  
13 [possession of smoking device] in the criminal proceeding entitled *The People of the State of*  
14 *California v. Raecine Ora Barragan* (Super. Ct. L.A. County, 2013, No. 3SY06118). The Court  
15 placed Respondent on two years probation and complete attendance of ten Narcotics Anonymous  
16 (NA) meetings.

17 b. The circumstances underlying the conviction are that on or about September 13, 2013,  
18 during a routine traffic stop, law enforcement officers found Respondent driving her vehicle while  
19 she had an expired driver's license. Respondent was found in possession of and admitted to being  
20 in possession of a glass pipe, controlled substance smoking device, drug paraphernalia in her purse.

21 **THIRD CAUSE FOR DISCIPLINE**

22 **(Violation of Drug Statutes)**

23 13. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision  
24 (j), on the grounds of unprofessional conduct, in that Respondent violated statutes regulating  
25 controlled substances and dangerous drugs, as follows:

26 a. On or about June 22, 2013, Respondent was in possession of Heroin, a controlled  
27 substance, when she administered Heroin to herself, without a valid prescription, violating  
28 section 4060. Complainant refers to and by this reference incorporates the allegations set forth

1 above in paragraph 11, inclusive, as though set forth fully.

2 b. On or about September 13, 2013, Respondent was in possession of drug  
3 paraphernalia, violating Health and Safety Code section 11364.1(a)(1). Complainant refers to and  
4 by this reference incorporates the allegations set forth above in paragraph 12, inclusive; as though  
5 set forth fully.

6 PRAYER

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

- 9 1. Revoking or suspending Pharmacy Technician Registration No. TCH 60484, issued to
- 10 Raecine Ora Barragan;
- 11 2. Ordering Raecine Ora Barragan to pay the Board the reasonable costs of the
- 12 investigation and enforcement of this case, pursuant to section 125.3; and
- 13 3. Taking such other and further action as deemed necessary and proper.

14  
15 DATED: 7/6/15

*Virginia Herold*

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

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