

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

In the Matter of the Accusation Against:

REYNA VANNESA WILLIAMSON,

Pharmacy Technician Registration
No. TCH 90448

Respondent.

Case No. 5614

OAH No. 2016120797

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to page two, paragraph #4:

The date should read as "May 4, 2014".

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective at 5:00 p.m. on August 31, 2017.

IT IS SO ORDERED this 1st day of August 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board Vice President

BEFORE THE
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In the Matter of the Accusation Against:

REYNA VANNESA WILLIAMSON,

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PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter in Los Angeles, California on April 13, 2017.

Jamin Xu, Certified Law Student, under the direction of Nancy A. Kaiser, Deputy Attorney General, represented Complainant.

Reyna Vanessa Williamson (Respondent) represented herself.

Evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision:

FINDINGS OF FACT

1. Virginia Herold signed the Accusation in her capacity as the Executive Officer of the Board of Pharmacy (Board).
2. The Board issued Pharmacy Technician Registration number TCH 90448 to Respondent on May 11, 2009. The registration has been renewed through February 28, 2019.
3. On May 6, 2015, in the Superior Court of the State of California, County of Los Angeles, case number KA108543, the court convicted Respondent on her nolo contendere plea to one felony count of violating Penal Code section 32, accessory after the fact.¹ The court suspended imposition of sentence and placed Respondent on formal

¹ Penal Code section 32 provides, "Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said

probation for three years on condition that she serve one day in Los Angeles County Jail, with credit for one day served, to complete 960 hours (120 days) of community service, and to complete a parenting class. The court also fined her \$670 and ordered her to pay \$3,384 in probation costs. Respondent is paying off that amount at the rate of \$25 per month. On November 9, 2015, Respondent completed the parenting course. On November 14, 2016, the court accepted Respondent's completion of 92 days of community service and deemed the community service portion of her probation as fulfilled. Respondent remains on formal probation until May 2018,

4. The facts and circumstances of the crime are that on March 4, 2014, Respondent and her step-father were both intoxicated and became involved in a bar fight with other patrons. After the step-father stabbed one of the bar patrons involved in the fight, Respondent drove him away from the scene. When the police initially interviewed Respondent, who was identified by an informant, she denied knowing who the man was whom she drove from the scene.

5. Respondent regrets her involvement in the bar fight. She does not regret having helped her step-father, but knows it was the wrong thing to do. Respondent wrote a narrative statement (part of Exhibit A) which she adopted as her testimony. In the statement Respondent expresses deep remorse for her conduct. Her statement reads, in part:

I believe some things happen for a reason. It is still hard to believe the mess I became involved in. I was unknowingly involved and charged with a crime despite the fact that I was the one being assaulted. I was devastated by the accusations against my father and heartbroken by the charges brought against me. I lost my job working with children, a job I was so passionate about. Now my pharmacy license, something I worked so hard to obtain, is in danger of being revoked.

I am an honest person with a good heart, but I had a lapse in judgment. I never go out; I'm always with my children and with my family. I am deeply sorry and so much regret my actions, which led to the event that took place on that night. I understand that this had an effect on the victim and his family, and it also had a huge effect on my immediate family and my children. [¶ . . . ¶]

This incident has made me more responsible and I am more aware of my surroundings. I've learned to make better judgments of who I befriend. I avoid going to bars and especially avoid indulging with alcohol because I know that my judgment is impaired [when I use alcohol]. I have learned that bad judgements have a negative outcome, and I do not want to ever go through this again.

principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.”

I plan on expunging my felony conviction and hopefully can begin this process by the fall. I will focus on making more payments towards my fines, [and] hopefully be in a position to ask for early termination of probation.

My plan is to move forward from this tragic event but [I] will not forget the lessons I learn[ed] from my mistakes. I have certainly learned that every action has a reaction and that every test has some type of result. I have stated earlier. I think some things happen for a reason. I think this incident has made me smarter and I have learned to use better judgment because bad decisions have bad results. I am certainly sorry to all who have been affected by my mistake and [I] hope to move forward and become a better person.

6. Respondent no longer drinks. She has worked for the past two years for Coach as a Selling Support Associate and earns \$11.60 per hour, working 28 to 34 hours per week. From this amount she supports herself and her two children, in addition to paying off her court and probation costs. She receives no financial support from the father of her two children. Respondent has never held a paid job as a pharmacy technician. She offered no evidence that she has any current prospects for obtaining such a job.²

7. The Board incurred reasonable expenses, including fees of the Attorney General, in the sum of \$1,862.50 in connection with the investigation and prosecution of this matter.

CONCLUSIONS OF LAW

1. The Board bears the burden of proof by a preponderance of the evidence, because pharmacy technicians hold an occupational license. (Evid. Code, § 115.)

2. This conclusion is supported by the Board's Disciplinary Guidelines (Guidelines),³ which provide:

² Respondent's job prospects are critical to the below order. The Board's standard terms and conditions of probation (Condition 12) require that a pharmacy technician must work a specified number of hours per month; failure to do so tolls probation by one month for every month the minimum hours are not worked, with a maximum tolling of 36 months before the tolling results in a violation of probation. There is no point in setting Respondent up to fail probation by virtue of her inability to find employment. She has been licensed almost eight years and has not been able to find employment as a pharmacy technician.

³ "In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary

Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

(Guidelines, p. 43.) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, “the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposition of a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

Moreover, the law makes plain that a pharmacy technician performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. “A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician’s nondiscretionary tasks may include “removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

3. A “preponderance of the evidence” is usually defined in terms of “probability of truth,” for example, as evidence that, “when weighed with that opposed to it, has more convincing force and the greater probability of truth.” In deciding whether a party has met his or her burden of proof, courts consider both direct and circumstantial evidence, and all reasonable inferences to be drawn from both kinds of evidence, giving full consideration to the negative and affirmative inferences to be drawn from all of the evidence, including that which has been produced by the opposing party. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 482-483.)

guidelines entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.” (Cal. Code Regs., tit. 16, § 1760.)

4. Business and Professions Code section 490 provides, in part:

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

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

5. Business and Professions Code section 4301 provides, in part:

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

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

[¶] . . . [¶]

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . .

6. California Code of Regulations, title 16 (Regulation), section 1770, provides:

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

7. Regulation section 1769, subdivision (c) provides:

(c) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

8. Respondent's felony conviction described in Finding 3 provides grounds for discipline of her registration. While it may be understandable that Respondent wanted to help her step-father in a time of extreme stress, it is nevertheless clear that the better course of action would have been for her, and her step-father, to have awaited the arrival of the police so they could provide their side of the story. There was no excuse for Respondent's lying to the police during her initial interview by denying she even knew who the person was whom she drove from the crime scene. This lack of honesty, coupled with the recency of her conviction and the fact that she is still on formal probation, leads to the conclusion that Respondent is not trustworthy enough to hold the very responsible position of a pharmacy technician.

9. The Board is entitled to recover from Respondent its reasonable costs of prosecution of this matter in the sum of \$1,862.50 under the provisions of Business and Professions Code section 125.3, by reason of Finding 7. However, it is not simply enough to make a finding as to the amount of costs incurred to make an actual award of cost recovery. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 (which is very similar to Bus. & Prof. Code, § 125.3) did not violate due process. Thus, it is reasonable to extend the reasoning in *Zuckerman* to Business and Professions Code section 125.3 to avoid constitutional pitfalls. The Court held that it was incumbent upon the board in that case to exercise its discretion to reduce or eliminate cost awards in a manner that ensured that cost recovery did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." (*Id.* at p.45.)

10. The *Zuckerman* court set forth four factors required to be considered in deciding whether to reduce or eliminate costs: (1) Whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. Section 317.5 and Business and Professions Code section 125.3 have substantially the same language and seek the same sort of cost recovery. It would be unduly punitive, in light of the severity of the

below Order, when coupled with Respondent's low income and relatively high expenses, to require Respondent to reimburse the Board for its cost of prosecuting this matter.

ORDER

Pharmacy Technician Registration number TCH 90448 issued to Reyna Vanessa Williamson, together with all licensing rights appurtenant thereto, is revoked.

Date: April 27, 2017

DocuSigned by:

Ralph B. Dash

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RALPH B. DASH

Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 5614

13 **REYNA VANNESA WILLIAMSON**
14 **11545 Klowa Rd.**
Apple Valley, CA 92308

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 90448**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about May 11, 2009, the Board issued Pharmacy Technician Registration
24 Number TCH 90448 to Reyna Vannesa Williamson (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on February 28, 2017, unless renewed.

27 ///

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1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states "Every license issued may be
6 suspended or revoked."

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued license
9 by operation of law or by order or decision of the board or a court of law, the
10 placement of a license on a retired status, or the voluntary surrender of a license by a
11 licensee shall not deprive the board of jurisdiction to commence or proceed with any
12 investigation of, or action or disciplinary proceeding against, the licensee or to render
13 a decision suspending or revoking the license.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

14 Each board under the provisions of this code shall develop criteria to evaluate
15 the rehabilitation of a person when:

- 16 (a) Considering the denial of a license by the board under Section 480; or
17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code provides, in pertinent part, that a board may suspend or
21 revoke a license on the ground that the licensee has been convicted of a crime substantially
22 related to the qualifications, functions, or duties of the business or profession for which the
23 license was issued.

24 8. Section 493 of the Code states:

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

1 to fix the degree of discipline or to determine if the conviction is substantially related
2 to the qualifications, functions, and duties of the licensee in question.

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

5 9. Section 4301 of the Code states:

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

10
11 (f) The commission of any act involving moral turpitude, dishonesty, fraud,
12 deceit, or corruption, whether the act is committed in the course of relations as a
13 licensee or otherwise, and whether the act is a felony or misdemeanor or not.

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

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) When considering the suspension or revocation of a facility or a personal
license on the ground that the licensee or the registrant has been convicted of a crime,
the board, in evaluating the rehabilitation of such person and his present eligibility for
a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

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- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

COSTS

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

FIRST CAUSE FOR DISCIPLINE

(May 6, 2015 Criminal Conviction for Accessory After the Fact on May 4, 2014)

13. Respondent has subjected her registration to discipline under sections 490 and 4301, subdivision (1) of the Code in that she was convicted of a crime that is substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On or about May 6, 2015, in a criminal proceeding entitled *People of the State of California v. Reyna Vanessa Williamson, aka Reyna V. Barrajas*, in Los Angeles County Superior Court, case number KA108543, Respondent was convicted on her plea of nolo contendere to violating Penal Code section 32, accessory after the fact (knowledge of a crime), in that she did harbor, conceal, and aid [her father] with the intent that he might avoid and escape from arrest, trial, conviction, and punishment.

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2. Ordering Reyna Vannesa Williamson 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;

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

DATED: 6/10/16



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

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