

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

In the Matter of the Accusation Against:

SOPHIA LOREN RIVAS,

Pharmacy Technician Registration
No. TCH 58293,

Respondent.

Case No. 5697

OAH No. 2016051113

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 14, 2016.

It is so ORDERED on October 14, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

SOPHIA LOREN RIVAS,

Original Pharmacist Technician Registration
No. TCH 58293

Respondent.

Case No. 5697

OAH No. 2016051113

PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on August 24, 2016, in Sacramento, California.

Leslie A. Burgermyer, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Sophia Loren Rivas represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on August 24, 2016.

SUMMARY

The gravamen of the Accusation is respondent's excessive consumption of alcoholic beverages on two separate occasions, both of which resulted in criminal convictions for driving under the influence of alcohol. The most recent conviction also included a conviction for leaving the scene of an accident at which another person was injured. Cause exists to discipline respondent's registration. While she demonstrated substantial insight into her abuse of alcohol at hearing and has made great efforts towards obtaining and maintaining her sobriety from alcohol for which she is to be commended, she did not introduce sufficient evidence of rehabilitation to demonstrate her continued ability to perform the duties of a pharmacy technician in a manner consistent with public health, safety, and welfare, even on a probationary basis. Therefore, respondent's registration should be revoked.

FACTUAL FINDINGS

Procedural Background

1. The Board issued Original Pharmacy Technician Registration Number TCH 58293 to respondent on September 2, 2004. The registration expires May 31, 2018, unless renewed or revoked. There is no history of prior discipline of the registration.

2. Complainant signed the Accusation on March 19, 2016, solely in her official capacity. The Accusation alleges cause exists to discipline respondent's registration based on her having engaged in unprofessional conduct by suffering two criminal convictions, having one or more convictions which involve the use of alcoholic beverages, using alcoholic beverages in a dangerous or injurious manner, and committing an act involving moral turpitude, dishonesty, fraud, deceit, and/or corruption.

Criminal Convictions

3. On July 25, 2011, in the Superior Court of the State of California, in and for the County of Fresno, Case No. M11600546, respondent pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol content of .08 percent or greater. Imposition of judgment and sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to serve 180 days in the Fresno County Jail, all but 10 days of which was suspended, and to pay fines, fees, and assessments. She was further ordered to enroll in and complete a three-month Level 1 First Offender Alcohol Program.

4. The factual basis for respondent's criminal conviction arose out of her December 5, 2010 arrest by the Reedley Police Department for suspicion of driving under the influence of alcohol. Her blood alcohol content was later determined to have been .16 percent at the time she was stopped by the Reedley Police Department.¹

5. On July 6, 2015, in the Superior Court of the State of California, in and for the County of Fresno, Case No. F14906770, respondent pled no contest to felony violations of Vehicle Code sections 23153, subdivision (b), driving a vehicle with a blood alcohol content of .08 percent or greater and causing bodily injury to another, and 20001, subdivision (a), leaving the scene of an accident at which another person was injured. She also admitted her two prior convictions for driving under the influence of alcohol² and a sentencing

¹ According to records of her criminal conviction, she and the deputy district attorney stipulated in the criminal proceeding that her blood alcohol content was .14 percent. For purposes of this administrative proceeding, however, the evidence establishes otherwise.

² As explained further in Factual Finding 11 below, respondent sustained a second misdemeanor conviction for violating Vehicle Code section 23152, subdivision (b), on

enhancement for driving with a blood alcohol content of .15 percent or greater. On August 31, 2015, respondent was convicted of the crimes to which she pled no contest. Imposition of judgment and sentence was suspended, and she was placed on formal probation for three years. She was ordered to serve 90 days in the Fresno County Jail, and to pay fines, penalties, and assessments. She was further ordered to abstain from all forms of alcohol, and to enroll in and complete an alcohol treatment program as directed by her probation officer.

6. The factual basis for respondent's conviction arose out of her involvement in a two-car accident on July 15, 2014. When an officer from the California Highway Patrol arrived on scene, first responders were in the process of extricating respondent from her vehicle. The officer noticed respondent had facial lacerations, a bloody nose, and swelling to her left cheek and eye area. She also had a seatbelt abrasion near her left shoulder and neck area consistent with her being the driver of the car. Respondent was transported to the hospital by ambulance before the officer was able to speak with her.

7. The CHP officer went to the hospital to which respondent was transported, and spoke with her in the emergency room. She admitted to being the driver and that "I drink too much, just keeping it real." The officer noticed a strong smell of alcohol emitting from respondent's breath while she spoke, and she had red, watery eyes and slow, slurred speech. He was able to perform only one field sobriety test due to her injuries. He determined she had driven while under the influence of alcohol based upon her objective signs of intoxication, admissions, and performance on the field sobriety test, and placed her under arrest. Respondent's blood alcohol content was subsequently determined to be .19 percent at the time of the accident.

8. Respondent testified at hearing to having no memory of the accident. She remembers the morning of the accident and then waking up in the hospital intubated. During the accident, she broke the left side of her face in seven places, "popped" her left pupil, nearly detached the left eye, sustained three bruises to her brain, "shattered" four ribs, and broke her left hip and left foot. She required 42 stitches to close lacerations to the inside and outside of her mouth. She was blind in her left eye for three weeks. It is her understanding the other driver was treated and released from the hospital the same day.

9. Respondent denied leaving or attempting to leave the scene of the accident, explaining her foot was stuck under the gas pedal. However, her conviction for leaving the scene of an accident establishes otherwise. (Pen. Code, § 1016, subd. (3) [a plea of no contest "to a crime punishable as a felony" has the same effect as a plea of guilty]; *Rusheen v. Drews* (2002) 99 Cal.App.4th 279, 284 [a no contest plea to a crime punishable as a felony constitutes a party admission by the defendant].)

October 21, 2013. That conviction, however, is not alleged as cause for disciplining respondent's registration.

Substantial Relationship

10. A criminal conviction is substantially related to the functions, duties, or qualifications of a pharmacy technician if it demonstrates to a substantial degree a technician's "present or potential unfitness ... to perform the functions authorized by [her] ... registration in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770) A pharmacy technician is authorized to remove drugs from stock; count, pour, and mix drugs; place the drugs into a container; affix the appropriate label or labels to the container; and package and repackage drugs. (Cal. Code Regs., tit. 16 § 1793.2) The ability to think clearly and without any impairment by alcohol is essential to the position. Each of respondent's two convictions for driving under the influence of alcohol demonstrates she may be lacking in those skills. Additionally, character traits for honesty and integrity are essential for a pharmacy technician, and respondent's conviction for leaving the scene of an accident establishes she may be lacking in both. Therefore, each of respondent's criminal convictions is substantially related to the qualifications, functions, or duties of a registered pharmacy technician.

Matters in Aggravation, Mitigation, or Rehabilitation

11. Complainant pled and proved respondent's October 21, 2013 criminal conviction for a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol content of .08 percent or greater, as a factor in aggravation. That conviction resulted in a criminal sentence which included a three-year probation term, jail time, and payment of fines, penalties, and assessments. Her blood alcohol content was determined to be .22 percent at the time she was driving.

On February 12, 2014, complainant issued Citation No. CI 2013 58020 to respondent for engaging in unprofessional conduct in violation of Business and Professions Code section 4301, subdivisions (h) and (l), by suffering the October 21, 2013 conviction. The citation imposed fines in the total amount of \$2,500, which respondent subsequently paid.

12. Respondent testified openly and candidly at hearing about her struggles with alcoholism. She began drinking alcohol after her husband left her in July 2010. She explained she went from not drinking at all to drinking "massive" amounts of alcohol. She drank one to three "tall cans" of Budweiser beer after her children went to sleep, a "good five days per week" for about six weeks. Her abuse of alcohol became so severe that she was unable to eat or drink anything else or care for herself or her children, and her siblings had to intervene and help care for respondent and her children.

13. Eventually, respondent's family convinced her to see a doctor and a marriage counselor, and she began to take back control of her life. She began caring for herself and her children without assistance from her family, and slowly weaned herself off of alcohol. Her New Year's resolution for 2011 was "to get it together," and she was eventually able to achieve sobriety in 2011.

14. Respondent maintained her sobriety for approximately 11 months before she began working as a bartender at the beginning of 2012. She explained that “just the environment” of working in a bar led her to start drinking again. She drank three, 16 ounce glasses of gin and tonic “a good four times a week.”

15. On May 6, 2014, respondent began working for AlixaRx, a closed-door pharmacy hub that provides and stocks on-site automated medication dispensing systems for long-term care and post-acute care providers who contract for its services. When she accepted her employment, she made a promise to her mother not to return to the “nightclub scene.” She honored that promise for two months, and did not consume any alcohol.

16. Respondent described July 15, 2014, as a “hard day,” because she learned some of the reasons why her husband left her. She reverted back to drinking alcohol to cope with the pain. She does not remember the accident, but she hears sounds when she is sleeping that her therapist explained are most likely sounds she actually heard while being extricated from her car.

17. At hearing, respondent described a time after the accident when she first woke up in the hospital intubated and tried to pull the intubation tube out of her throat. Her physicians induced a coma, and she woke three days later. Someone showed her a mirror, and she saw that her “entire face was caved in.” She explained, “that’s when I knew” she had to take her sobriety seriously.

18. Respondent began attending Alcoholics Anonymous (AA) meetings on August 7, 2014, because “what I did was unnecessary and uncalled for,” and she needed to make a change and learn not to allow her husband to have so much control over her. She attended AA meetings three times a day, every day for almost two years “until I learned to forgive” her husband and that she was not at fault for the choices he made.

19. More recently, respondent has been attending AA meetings four to five times each week because she has a baby (a one-year-old) and returned to work. The chief executive officer of AlixaRx found online webinars for AA, and respondent is given time during work to attend those meetings. Additionally, she is allowed to take an extended lunch break, and her supervisor sometimes brings her to and picks her up from AA meetings.

20. At the suggestion of her probation officer, respondent attends weekly AA meetings in the Fresno County Jail. She shares her story of alcohol abuse and the steps she has taken and continues to take to achieve and maintain her sobriety. Some of the inmates remember her from when she was incarcerated, and have told her she looked like “the elephant man” after her accident. Others initially dismiss her as not knowing anything because of her age, but then leave the meetings in tears after hearing her story. Several have named her “Hope” because she has given them hope for a better tomorrow. Respondent described her work in the Fresno County Jail as very important to her new life of sobriety, explaining “if I can help change one person, just one person.”

21. In addition to attending AA meetings, respondent completed the Random Call Drug Testing Program offered by Choices Compliance Solutions on August 3, 2015. She explained that the family law judge in her marital dissolution proceeding referred her to the program to receive "some assurances" about her fitness as a parent. Additionally, her probation officer confirmed she completed saliva tests for drug use and breathalyzer tests for alcohol consumption on October 5 and December 7, 2015, and February 24, May 20, and July 25, 2016, all of which were negative. Respondent briefly mentioned attending counseling with an addiction specialist in 2014, mainly to address her feelings of anxiety and depression associated with a previous physical assault. She has worked the 12 steps of AA three times, including the step that required her to apologize to the person injured during her most recent incident of driving under the influence of alcohol.

22. Respondent is a single mother of five children, the oldest of whom is 19 years old and the youngest is one year old. All of her children live at home, except for the oldest. Her oldest moved out because she likes to "party" and drink alcohol, and respondent does not allow any alcohol in her home. She testified to her devotion to her children at hearing, and her testimony was corroborated by character reference letters she offered at hearing.

23. Respondent has maintained continuous employment at AlixaRx since she started in 2014. She works as a Customer Service Representative II, handling telephone calls from physicians and nurses, entering prescription orders into the company database, and dispatching employees to service clients. She does not currently, and has not in the past, performed any duties for which registration is required, but candidly admitted she could be transferred at any time to a position for which registration is required. Respondent's supervisor wrote a letter of support attesting to respondent's value as an employee and her successfully overcoming her abuse of alcohol.

Disciplinary Guidelines

24. The Board has adopted disciplinary guidelines for consideration when determining the appropriate level of discipline for violations of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.) and regulations adopted pursuant to it. Generally, the guidelines categorize common violations into one of four categories, and specify a minimum and maximum range of recommended discipline for each category. With regard to pharmacy technicians, however, the guidelines recommend revocation as typically being the appropriate penalty when grounds for discipline exist. If revocation is not imposed, the guidelines recommend that a Category III level of discipline be imposed. And the recommended discipline for a Category III violation ranges from stayed revocation with a 90-day actual suspension and probation for three to five years, at the low end, to outright revocation, at the high end. Factors relevant to determining whether the minimum, intermediate, or maximum recommended discipline is appropriate include: 1) actual or potential harm to the public; 2) actual or potential harm to any consumers; 3) prior history of discipline; 4) prior warnings; 5) the number and nature of the current violation(s); 6) aggravating, mitigating, and rehabilitation evidence; 7) compliance with the criminal

sentence imposed and overall criminal record; and 8) the amount of time that has elapsed since engaging in the conduct for which discipline is sought.

25. Respondent has a relatively short history of abusing alcohol, but it is a troubling one nonetheless. She has been subject to the jurisdiction of the Fresno County Probation Department continuously since July 25, 2011, as a result of her decisions to drive her car after consuming alcohol. Her current term of probation is scheduled to end August 30, 2018. All three of her convictions for driving under the influence of alcohol involved a blood alcohol content that was at least twice the legal limit for driving, the second involved one that was nearly three times the legal limit.

26. Respondent's husband leaving her was the initial cause of her resorting to alcohol to cope with difficult situations, and her learning some of the reasons for his leaving led to her drinking in excess on July 15, 2014. But she claimed at hearing to have learned not to be so heavily influenced by his decisions and actions. She showed significant insight into the dangers of her previous behavior, speaking openly and honestly about her past misconduct. She has maintained her sobriety since July 15, 2014, despite recognizing "it's very hard to be sober every day." She described a period of time when drinking alcohol was her "outlet," but now recognizes that was wrong. Now, attending AA meetings is her "outlet," and she described that outlet as being "better than any alcohol I ever consumed." Respondent understands she has to have the desire to maintain her sobriety for herself and her children, and not because it is something desired by the criminal courts.

27. Respondent recognizes that maintaining her sobriety will be a life-long process, "and I'll work on it for the rest of my life." She does not allow any form of alcohol in her home – not even Listerine mouthwash. She does not eat at restaurants that cook with or serve alcohol, and she does not attend family events where she knows or suspects alcohol will be served. She recently skipped her aunt's funeral because she knew alcohol would be served afterwards. If she finds herself at a place where alcohol is served unexpectedly, she immediately leaves. She prays every day for the strength to maintain her sobriety, be a good mother, and make good decisions.

28. Respondent's family, friends, and three AA sponsors support her commitment to a sober lifestyle. Her probation officer is also a big source of support, and respondent described her as "my go to." Her sponsors wrote letters of support verifying respondent's commitment to sobriety and attendance at AA meetings. Her second oldest child and several friends wrote letters discussing the positive changes they have seen respondent make in her life since committing herself to sobriety.

Summary

29. Cause exists to discipline respondent's pharmacy technician registration for the reasons explained in the Legal Conclusions below. She is commended for the steps she has taken thus far to overcome her abuse of alcohol, and is encouraged to continue living a life of sobriety. But the gravity of the actions which subject her registration to discipline and

the short amount of time that has elapsed since she engaged in such conduct necessitates a longer period of sobriety to ensure her continued fitness for licensure. And since her second conviction for driving under the influence of alcohol occurred while she was on probation for the first and the third conviction occurred while she was on probation for the second, she is not a good candidate for a probationary license. Therefore, her registration should be revoked.

Costs of Investigation and Enforcement

30. Complainant has requested costs of investigation and enforcement in the total amount of \$4,071 pursuant to Business and Professions Code section 125.3. This amount consists of costs incurred directly by the Board (\$131), as well as costs incurred by the Office of the Attorney General and billed to the Board (\$3,840).³ At hearing, complainant introduced a Certification of Costs of Investigation by Agency Executive Officer in Case No. 5697 in which she certifies that the Board incurred costs in the amount of \$131 for obtaining certified copies of the records of respondent's criminal convictions. A receipt from the Superior Court of the State of California, in and for the County of Fresno, is attached to the Certification.

Complainant also introduced a Certification of Prosecution Costs: Declaration of Leslie A. Burgermyer, which states the Office of the Attorney General has billed the Board \$3,940 for the time she and her colleagues have spent working on this matter. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the total amount of \$3,940.

Respondent did not object to any of complainant's evidence of costs. She explained she works for AlixaRx on a full-time basis, and is the sole source of income for her household. She estimated her gross monthly income to be \$3,300 and her monthly expenses to be \$1,728.

Costs of investigation and enforcement in the total sum of \$3,971 are reasonable as explained further in Legal Conclusion 7 below.

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³ At hearing, Ms. Burgermyer's motion to amend paragraph 8 of her declaration to reflect the combined amount of costs complainant is requesting as being \$4,071 was granted, without objection. However, the sum of the costs incurred directly by the Board (\$131) and the costs incurred by the Office of the Attorney General and billed to the Board (\$3,840) is \$3,971.

LEGAL CONCLUSIONS

Applicable Standard/Burden of Proof

1. Two different standards of proof apply in license discipline proceedings: the clear and convincing to a reasonable certainty standard, and the preponderance of the evidence standard. And the courts make “a distinction between professional licenses, such as those held by doctors [citation], lawyers [citation], and real estate brokers [citation], on the one hand, and nonprofessional or occupational licenses, such as those held by food processors [citation] and vehicle salespersons [citation], on the other hand,” in determining which standard applies. (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The clear and convincing standard applies when disciplining the former types of licenses, whereas the preponderance of the evidence standard applies when disciplining the latter types. (*Ibid.*)

The appellate court in *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, explained the reason for applying a different standard depending on the type of license being disciplined as follows:

Because a professional license represents the licensee’s fulfillment of extensive educational, training and testing requirements, the licensee has an extremely strong interest in retaining the license that he or she has expended so much effort in obtaining. It makes sense to require that a higher standard of proof be met in a proceeding to revoke or suspend such a license. The same cannot be said for a licensee’s interest in retaining a [nonprofessional] license.

(*Id.*, at p. 1894.)

Business and Professions Code section 4202, subdivision (a), provides the following regarding the issuance of a pharmacy technician registration:

The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

- (1) Has obtained an associate’s degree in pharmacy technology.
- (2) Has completed a course of training specified by the board.
- (3) Has graduated from a school of pharmacy recognized by the board.

(4) Is certified by the Pharmacy Technician Certification Board.

Based upon the above, complainant has the burden of proving the existence of cause to discipline respondent's pharmacy technician registration, and she must do so by clear and convincing evidence to a reasonable certainty. "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Cause for Discipline

2. The Board may discipline a pharmacy technician registration if the technician has engaged in unprofessional conduct, which includes, but is not limited to, "the conviction of a crime substantially related to the qualifications, functions, and duties of a [registrant] under this chapter." (Bus. & Prof. Code, § 4301, subd. (l).) Each of respondent's criminal convictions for driving under the influence of alcohol discussed in Factual Findings 3 and 5 are substantially related for the reasons explained in Factual Finding 10 and, therefore, constitutes cause to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (l).

3. Unprofessional conduct also includes "the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances." (Bus. & Prof. Code, § 4301, subd. (k).) Respondent's criminal convictions for driving under the influence of alcohol discussed in Factual Findings 3 and 5 each involved the use, consumption, and self-administration of an alcoholic beverage. The former was a misdemeanor, while the latter was a felony. Therefore, both convictions together constitute cause to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (k). Additionally, the felony conviction alone constitutes cause to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (k).

4. Unprofessional conduct also includes "the administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to contact with safety to the public the practice authorized by the license." (Bus. & Prof. Code, § 4301, subd. (h).) Respondent used alcoholic beverages in a dangerous or injurious manner when she drove her car after consuming alcohol on December 5, 2010, and July 15, 2014, as explained in Factual Findings 4 and 6 through 8, respectively. (See, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770 [discussing the dangers of driving while under the influence of alcohol].) Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (h).

5. Unprofessional conduct also includes “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.” (Bus. & Prof. Code, § 4301, subd. (f).) On July 15, 2014, respondent attempted to leave the scene of an accident at which someone other than herself was injured as discussed in Factual Findings 5 and 9. Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (f).

Conclusion

6. Cause exists to discipline respondent’s pharmacy technician registration for the reasons explained in Legal Conclusions 2 through 5, individually and collectively. When all the evidence is considered, respondent did not present sufficient evidence of her ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare, even on a probationary basis, as explained in Factual Findings 24 through 29. Therefore, her registration should be revoked.

Award of Costs

7. Business and Professions Code section 125.3 provides the following regarding the Board’s ability to recover its reasonable costs of investigation and enforcement:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the proceeding, the administrative law judge may 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.

[¶] ... [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of the reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

(1) For services provided by a regular agency employee, the Declaration may be executed by the agency or its designee and shall describe the general tasks performed, the time spent on each task and the method of calculating the cost. For other costs, the bill, invoice or similar supporting document shall be attached to the Declaration.

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

After considering the relevant evidence and the pertinent *Zuckerman* factors, costs in the amount of \$3,971 are reasonable and are awarded as set forth in the Order below.

ORDER

1. Original Pharmacy Technician Registration No. TCH 58293 issued to respondent Sophia Loren Rivas is REVOKED. Respondent shall relinquish her technician license to the Board within ten (10) days of the effective date of this decision.

2. As a condition precedent to reinstatement of her revoked technician license, respondent shall reimburse the Board its costs of investigation and enforcement in the total sum of \$3,971. Said amount shall be paid in full prior to the reapplication or reinstatement of her revoked technician license, unless otherwise ordered by the Board.

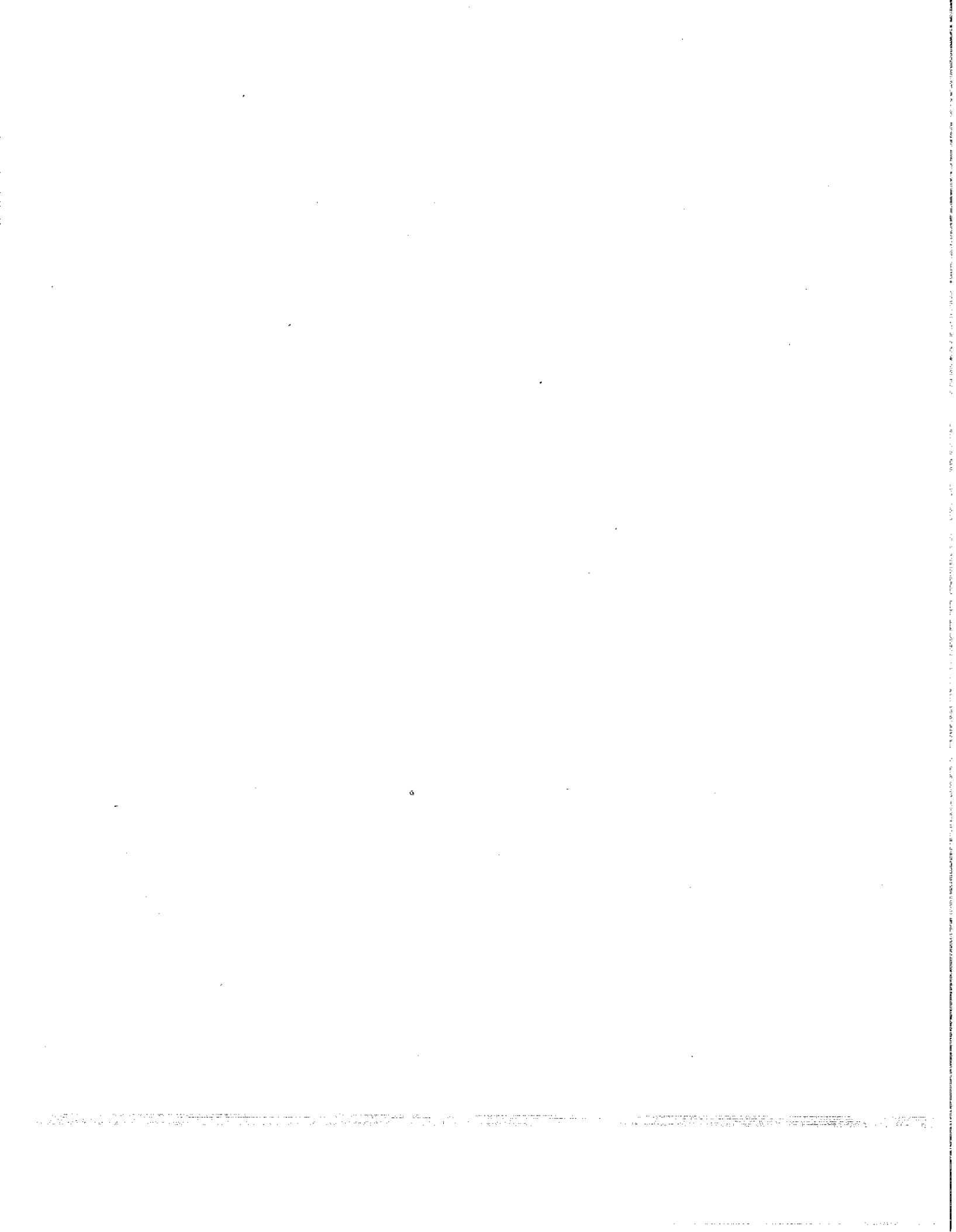
DATED: September 12, 2016

DocuSigned by:

Coren D. Wong

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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings



1 KAMALA D. HARRIS
Attorney General of California
2 KENT D. HARRIS
Supervising Deputy Attorney General
3 LESLIE A. BURGERMYER
Deputy Attorney General
4 State Bar No. 117576
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5337
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 5697

12 **SOPHIA LOREN RIVAS**
4504 N. Valentine Ave., Apt. 180
13 Fresno, CA 93722

ACCUSATION

14 **Original Pharmacy Technician Registration**
15 **No. TCH 58293**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

- 19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
- 21 2. On or about September 2, 2004, the Board issued Original Pharmacy Technician
22 Registration Number TCH 58293 to Sophia Loren Rivas ("Respondent"). The Original Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on May 31, 2016, unless renewed.

25 **JURISDICTION**

- 26 3. Business and Professions Code ("Code") section 4300 states, in pertinent part:
27 (a) Every license issued may be suspended or revoked.
28 (b) The board shall discipline the holder of any license issued by the board,

1 whose default has been entered or whose case has been heard by the board and found
2 guilty, by any of the following methods:

3 (1) Suspending judgment.

4 (2) Placing him or her upon probation.

5 (3) Suspending his or her right to practice for a period not exceeding one
6 year.

7 (4) Revoking his or her license.

8 (5) Taking any other action in relation to disciplining him or her as the board
9 in its discretion may deem proper.

10 4. Code section 4300.1 states:

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

17 STATUTORY AND REGULATORY PROVISIONS

18 5. Code section 4301 states, in pertinent part:

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

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

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

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

(l) The conviction of a crime substantially related to the qualifications,
functions, and duties of a licensee under this chapter. The record of conviction of a
violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
States Code regulating controlled substances or of a violation of the statutes of this
state regulating controlled substances or dangerous drugs shall be conclusive
evidence of unprofessional conduct. In all other cases, the record of conviction shall
be conclusive evidence only of the fact that the conviction occurred. The board may
inquire into the circumstances surrounding the commission of the crime, in order to
fix the degree of discipline or, in the case of a conviction not involving controlled

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

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

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

11 COST RECOVERY

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Criminal Convictions)

20 8. Respondent is subject to disciplinary action pursuant to Code section 4301(I), on the
21 grounds of unprofessional conduct, in that Respondent committed crimes substantially related to
22 the qualifications, functions, and duties of a licensed pharmacy technician, as follows:

23 9. On or about July 25, 2011, in a criminal proceeding titled *People v. Sophia Loren*
24 *Rivas*, Fresno County Superior Court of California Case No. M11600546, Respondent was
25 convicted by the court on her plea of nolo contendere to violating Vehicle Code section 23152(b)
26 [driving under the influence of alcohol while having a blood alcohol level of .08% or higher], a
27 misdemeanor. Respondent stipulated to .14% blood alcohol concentration.
28

1 a. The underlying circumstances of the crime are: On or about December 5, 2010,
2 an officer with the Reedley Police Department responded to a report that Respondent was
3 intoxicated and left the scene of a domestic altercation in a vehicle. The officer detained
4 Respondent in the vehicle she reportedly left in. The officer noted that Respondent's eyes were
5 red, watery and bloodshot, she was unsteady on her feet, and the odor of an alcoholic beverage
6 emitted from her person. Respondent failed to perform field sobriety tests as explained and
7 demonstrated. Respondent's blood alcohol concentration was .16%.

8 10. On or about July 6, 2015, in a criminal proceeding titled *People v. Sophia Loren*
9 *Rivas*, Fresno County Superior Court Case No. F14906770, Respondent was convicted by the
10 court on her plea of no contest to violating Vehicle Code section 23153, subdivision (b) [causing
11 injury to another while driving under the influence of alcohol with .08% or more blood alcohol
12 level], a felony, with two prior convictions for violating Vehicle Code section 23152, and an
13 enhancement of Vehicle Code section 23578 [blood alcohol level .15% or higher]; and, Vehicle
14 Code section 20001, subdivision (a) [failure of a driver involved in an accident resulting in injury
15 to stop and provide reasonable assistance to the injured person and information, as required], a
16 felony. Respondent stipulated to .19% blood alcohol concentration.

17 a. The underlying circumstances of the crime are: On or about July 15, 2014, an
18 officer with the California Highway Patrol responded to a report of an injury accident. At the
19 scene, the officer he observed two cars, one blocking an on-ramp that collided with a guard rail,
20 and a second that collided with a tree down an embankment; both vehicles had visible collision
21 damage. According to the victim with whom Respondent collided, Respondent attempted to flee
22 the scene of the accident, lost control of her vehicle and collided with the tree. The officer
23 questioned Respondent at a local hospital and observed that Respondent showed the objective
24 signs of intoxication. She admitted that she had ingested three 16 oz. gin and tonics prior to
25 driving her vehicle just prior to the collision. Respondent's blood alcohol concentration was
26 .19%.

27 ///

28 ///

1 **SECOND CAUSE FOR DISCIPLINE**

2 (One or More Convictions Involving the Use of Alcoholic Beverages)

3 11. Respondent is subject to disciplinary action pursuant to Code section 4301,
4 subdivision (k), on the grounds of unprofessional conduct, in that she has been convicted more
5 than once of a crime involving the use of an alcoholic beverage, as set forth in paragraphs 8, 9
6 and 10, and all of their subparts, above, incorporated herein by reference.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Use of Alcohol Beverages in a Dangerous or Injurious Manner)

9 12. Respondent is subject to disciplinary action pursuant to Code section 4301,
10 subdivision (h), in that Respondent used alcoholic beverages in a manner dangerous or injurious
11 to herself and others, as more fully set forth in paragraphs 9 and 10, and all of their subparts,
12 above, incorporated herein by reference.

13 **FOURTH CAUSE FOR DISCIPLINE**

14 (Moral Turpitude, Dishonesty, Corruption)

15 13. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
16 Code section 4301, subdivision (f), in that Respondent committed an act involving moral
17 turpitude, dishonesty, fraud, deceit, and/or corruption. Specifically, Respondent collided with
18 another vehicle causing injury to another while driving a vehicle under the influence of an
19 alcoholic beverage and attempted to leave the scene of the accident, as set forth in paragraph 10
20 and its subpart, above, incorporated herein by reference.

21 **MATTERS IN AGGRAVATION**

22 14. To determine the degree of discipline, if any, to be imposed on Respondent,
23 Complainant alleges that on or about January 13, 2014, the Board issued Citation and Fine No.
24 CI-2013-58020 to Respondent on the grounds that she violated Code sections 4301, subdivision
25 (h) [use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
26 oneself] and 4301, subdivision (l) [conviction of a crime substantially related to the practice of
27 pharmacy], and imposed the fine of \$2,500.00. Respondent paid the fine in full.

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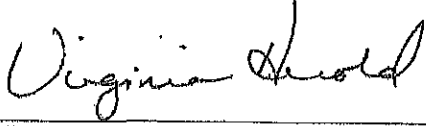
1 a. The Citation was based on Respondent's conviction in the matter titled *People*
2 *v. Rivas*, Fresno County Superior Court Case No. M13923926, wherein on about October 21,
3 2013, she pled nolo contendere to violating Vehicle Code section 23152, subdivision (b) [driving
4 under the influence of alcohol while having a blood alcohol level of .08% or higher], a
5 misdemeanor, with an enhancement of Vehicle Code section 23578 [blood alcohol level of .15%
6 or higher], and one prior. Respondent stipulated to a blood alcohol level of .22%. The
7 underlying circumstances of the crime are: On or about July 30, 2013, Respondent was
8 questioned by an officer with the California Highway Patrol who was conducting a DUI
9 evaluation. Respondent declined field sobriety tests, admitting that it would be a waste of time
10 because she knew she was highly intoxicated. Respondent's blood alcohol level was .23/.22%.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 58293
15 issued to Sophia Loren Rivas;
- 16 2. Ordering Sophia Loren Rivas to pay the Board of Pharmacy the reasonable costs of
17 the investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3; and,
- 19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 3/19/16



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

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