

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

In the Matter of the Accusation Against:

TRINIDAD TOVAR VEGA,

Pharmacy Technician Registration No. TCH
120956

Respondent.

Case No. 5752

OAH No. 2017070501

DECISION AND ORDER

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 one, Caption Box and page 7, paragraph 1 of the Order:

The license prefix should read as "TCH".

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 November 15, 2017.

It is so ORDERED on October 16, 2017.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By _____

Amy Gutierrez, Pharm.D.
Board President

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THC 120956

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PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 7, 2017, in Sacramento, California.

Jeffrey Phillips, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Trinidad Tovar Vega (respondent) appeared and represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 7, 2017.

FACTUAL FINDINGS

1. On May 18, 2012, the Board issued to respondent Pharmacy Technician Registration Number TCH 120956 (registration). The registration expired on July 31, 2017.¹

¹ Pursuant to Business and Professions Code section 118, subdivision (b), the expiration of a registration does not deprive a Board of jurisdiction to proceed with disciplinary action upon any ground provided by law during any period in which the license may be renewed, restored, reissued or reinstated.

2. On March 1, 2017, complainant, acting solely in her official capacity as the Executive Officer of the Board, signed and filed the Accusation. Complainant seeks to discipline respondent's registration based upon her March 15, 2016 criminal conviction for assault.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Criminal Conviction

4. On March 15, 2016, in the Superior Court, County of Madera, respondent was convicted, on her guilty plea, of assault by means of force likely to produce great bodily injury, a violation of Penal Code section 245, subdivision(a)(4), a misdemeanor. Respondent was sentenced to 23 days in jail, with credit for 23 days served. She was placed on three years of informal probation. She was also ordered to pay approximately \$400 in fines and fees.

5. The circumstances underlying respondent's conviction occurred on April 19, 2014. Officers from the Madera Sherriff's office were dispatched to Minturn Bar in Chowchilla, California, to investigate a report of assault and robbery. The officers arrived at Minturn and spoke to the victim D.B., who reported that he went to a restaurant in Chowchilla.² He met two women, one later identified as respondent. He invited the women to his home. He left the restaurant with the women and entered a van. There was a man inside the vehicle. The group drove to the Minturn. He reported that the women began to punch him, threw him to the ground and took his wallet, which had \$1,600 inside. The officers observed that D.B. had a strong odor of alcohol, slurred speech, and red eyes. His shirt was almost completely ripped off and he had blood on his arms.

6. Officers from the Madera County Sherriff's office conducted an extensive investigation of the incident, including conducting several interviews with D.B., and with employees of the restaurant in Chowchilla and of the Minturn. The officers also reviewed surveillance video from the restaurant showing respondent with D.B. The officers located respondent and the man and woman present in the van on the night of the assault.

7. On April 23, 2014, respondent was arrested while she was at work in the pharmacy at Rite Aid in Chowchilla. The officer told respondent that he was investigating a theft. Respondent agreed to provide the officer a statement. The officer asked respondent to tell him what she did April 19, 2014. Initially, respondent stated that she drove to a restaurant in Chowchilla with a girlfriend. Respondent further stated that a "couple of guys"

² The victim's initials are used to protect his privacy.

bought her and her girlfriend drinks. Respondent stated that she and her girlfriend left the restaurant alone before it closed.

The officer confronted respondent with information he had obtained during the course of the investigation about D.B. Respondent admitted that D.B. had bought her and her girlfriend drinks. She denied leaving with D.B. or that she was involved in his assault and robbery. As respondent was confronted with more information from the officer, respondent admitted that D.B. left with restaurant with her, a male friend and her girlfriend. Respondent claimed that they were going to give D.B. a ride home. D.B. asked respondent and her girlfriend how much money they would charge to sell their bodies to him. Respondent contended that they told D.B. to get out of the car. Respondent denied that she harmed D.B. or stole his money. After the interview, respondent was transported to jail.

8. Board Inspector Jennifer Hall testified that respondent's conviction for assault is substantially related to the qualifications of pharmacy technician because respondent is expected to behave in an honest, forthcoming and professional manner at all times.

Respondent's Evidence

9. At hearing, respondent did not admit that she had assaulted D.B. Respondent contended that she and her friends offered to give D.B. a ride home. While in the vehicle, he solicited sex from her and her girlfriend. Respondent and her friends told D.B. to get out of the vehicle. D.B. grabbed her friend. There was a struggle and D.B.'s shirt was ripped. Respondent tried to help her friend who was being assaulted. Respondent contended that she initially lied to officers because she was scared. She then realized that she should have called the police after the incident and, based on her failure to do so, she had to take responsibility for the incident. Respondent testified that she made some mistakes that she "regrets dearly," but the mistakes do not define who she is as a person.

10. Respondent will be on probation until March 15, 2019. She has not finished paying the court imposed fines and fees. Respondent was not required to complete any counseling or anger management as a result of her conviction. Respondent voluntarily attended counseling for "a few weeks" between February and April 2017, in an effort to get off medication she had been prescribed.

11. Respondent is 30 years old. She last worked as a pharmacy technician in April 2014, when she was arrested at work and transported to jail. Respondent has secured sporadic employment since 2014. Her last employment at a gas station ended in December 2016. Respondent would like to find employment as a pharmacy technician because she enjoys the work. She has applied for several pharmacy technician positions but has been denied employment due to her conviction.

12. At hearing, respondent submitted an unsigned and undated letter from Andrea Lopez, who worked with respondent at Rite Aid. Ms. Lopez has known respondent for approximately four years. Ms. Lopez described respondent as a hard worker, who was always “positive and nice” to customers.

Discussion

13. The determination whether to discipline a license should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, mitigation, aggravation and rehabilitation. The licensee “should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation.” (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth the following criteria for evaluating the rehabilitation of a licensee when considering the suspension or revocation of a license based upon a conviction:

- (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 any or 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.

Applying the rehabilitation criteria, respondent’s conviction for assault by means of force likely to produce great bodily injury is a recent conviction. The underlying facts of the conviction are concerning. Respondent initially denied to law enforcement that she had any contact with the victim. Only upon learning of incriminating evidence, respondent admitted that D.B. left a restaurant with her and her friends. At hearing, respondent contended that D.B. was involved in a struggle with her friend and that respondent was “trying to help her friend.” Respondent did not admit that she assaulted D.B. However, the “record of the conviction shall be conclusive evidence thereof.” Respondent’s plea is conclusive evidence of guilt for the purpose of imposing administrative discipline or denial of licensure. (See *Arneson v. Fox* (1980) 28 Cal.3d 440, 449; see also, *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-146.)

Respondent offered very little evidence of rehabilitation. She completed a few weeks of counseling. Other than the unsigned letter from her past co-worker, she did not offer any evidence from family, friends, counselors, or employers attesting to her rehabilitation.

Additionally, respondent will be on probation until March 2019. As a result, there has been an insufficient amount of time to evaluate her rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period of analysis during which he is not on probation or parole].)

14. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) The Board must be assured that respondent can exercise good judgment and that she will not pose a threat to the health, safety, or welfare of the public. Respondent must demonstrate that her conviction was an isolated incident and that she is taking steps to rehabilitate. As a result, when all the facts and circumstances are considered, it would be contrary to the public interest to allow respondent to remain licensed at this time.

Costs

15. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complainant submitted in evidence a certification of costs from the Deputy Attorney General which established the costs of prosecution and investigation in the sum of \$2,167.50.

16. As set forth in Legal Conclusion 8, the Board's request that respondent reimburse \$2,167.50 for its legal costs is reasonable. However, based on respondent's current financial situation, respondent will not be required to pay these costs until she seeks reinstatement of her registration.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300 provides that the Board may suspend or revoke any license.

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189.)

3. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including 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. . . . [T]he record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

4. Pursuant to California Code of Regulations, title 16, section 1770, “a crime or act shall be considered substantially related to the qualifications, functions or duties of a . . . registrant if to a substantial degree it evidences present or potential unfitness of a . . . registrant to perform the functions authorized by [her] . . . registration in a manner consistent with the public health, safety, or welfare.”

5. As set forth in in Factual Findings 4 through 8, complainant established through clear and convincing evidence that respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption when she assaulted D.B. Therefore, cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (f).

6. As set forth in in Factual Findings 4 through 8, complainant established through clear and convincing evidence that respondent was convicted of assault by means of force likely to produce great bodily injury, a violation of Penal Code section 245, subdivision(a)(4). The crime committed by respondent is substantially related to the qualifications, functions, or duties of a pharmacy technician, as her conduct shows present or potential unfitness to perform the duties of a pharmacy technician in a manner that is consistent with the public health, safety, or welfare. Therefore, cause for disciplinary action exists under Business and Professions Code section 4301, subdivision (l).

7. As set forth in Factual Findings 9 through 14, while respondent submitted some evidence of rehabilitation, she did not establish that she is sufficiently rehabilitated to remain licensed at this time.

Costs

8. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. 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 whether the licensee has been

successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

Complainant seeks \$2,167.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. However, because respondent is unemployed, she should be allowed to pay these costs if her registration is reinstated.

Conclusion

9. When considering the Factual Findings and Legal Conclusions as a whole, in order to ensure that the public health, safety and welfare are adequately protected, respondent's registration must be revoked.

ORDER

1. Pharmacy Technician Registration Number THC 120956 issued to Trinidad Tovar Vega is REVOKED.

2. In the event that respondent applies for reinstatement of her registration, she shall pay to the Board the costs of investigation and prosecution of this matter, in the amount of \$2,167.50, in such manner as the Board directs.

DATED: September 14, 2017

DocuSigned by:
Marcie Larson
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MARCIE LARSON
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 5752

12 **TRINIDAD TOVAR VEGA**
13 **435 S. 4th Street**
Chowchilla, CA 91910

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
15 **120956**

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 May 18, 2012, the Board issued Pharmacy Technician Registration
22 Number 120956 to Trinidad Tovar Vega ("Respondent"). The registration was in full force and
23 effect at all times relevant to the charges brought herein and will expire on July 31, 2017, unless
24 renewed.

25 **JURISDICTION**

26 3. Business and Professions Code ("Code") section 4300 provides, in pertinent part, that
27 every license issued by the Board is subject to discipline, including suspension or revocation.

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4. Code section 4300.1 states:

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

STATUTORY PROVISIONS

5. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been 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. . .

COST RECOVERY

6. Code section 125.3 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.

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

7. Respondent is subject to discipline pursuant to Code section 4301(l), on the grounds of unprofessional conduct, in that on or about March 15, 2016, in the case of *People v. Trinidad T. Vega, et al*, (Super. Ct. Madera County, 2015, Case No. MCR048821B,C), Respondent was convicted by the Court on her plea of guilty of violating Penal Code section 245(a)(4) (assault by means of force likely to produce great bodily injury), a misdemeanor.

The circumstances of the crime were that on or about April 19, 2014, Respondent did willfully and unlawfully commit an assault upon D.B. by means of force likely to product great bodily injury. Respondent used force upon the person of D.B. causing physical injuries to him.

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 8. Respondent is subject to discipline pursuant to Code section 4301(f), on the grounds
4 of unprofessional conduct, in that Respondent committed act(s) involving moral turpitude,
5 dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as
6 a licensee or otherwise, and whether the act is a felony or misdemeanor or not, as alleged in
7 paragraph 7.

8 PRAYER

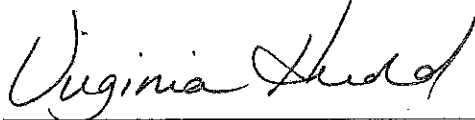
9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 120956,
12 issued to Trinidad Tovar Vega;

13 2. Ordering Trinidad Tovar Vega to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3; and,

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

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18 DATED: 3/1/17



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

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