

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 MARICHELLE S. TAHIMIC
Deputy Attorney General
4 State Bar No. 147392
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3154
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4359

12 **ROSA G. ZAIA**
41595 Deanna Ranch Rd.
13 Murietta, CA 92362

A C C U S A T I O N

14 **Pharmacy Technician Registration No.**
38750

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 28, 2001, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number 38750 to Rosa G. Zaia (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on January 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

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4. Section 4300 of the Code states:

- (a) Every license issued may be suspended or revoked.
- (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - (1) Suspending judgment.
 - (2) Placing him or her upon probation.
 - (3) Suspending his or her right to practice for a period not exceeding one year.
 - (4) Revoking his or her license.
 - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

...

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AND REGULATORY PROVISIONS

6. Section 4301 of the Code states:

The 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:

- ...
- (h) 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

1 holding a license under this chapter, or to any other person or to the
2 public, or to the extent that the use impairs the ability of the person
3 to conduct with safety to the public the practice authorized by the
4 license.

5 ...
6 (k) The conviction of more than one misdemeanor or any felony
7 involving the use, consumption, or self-administration of any
8 dangerous drug or alcoholic beverage, or any combination of those
9 substances.

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

7. Section 482 of the Code states:

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

(a) Considering the denial of a license by the board under Section
480; or

(b) Considering suspension or revocation of a license under Section
490.

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

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 9. Section 493 of the Code states:

4 Notwithstanding any other provision of law, in a proceeding
5 conducted by a board within the department pursuant to law to deny
6 an application for a license or to suspend or revoke a license or
7 otherwise take disciplinary action against a person who holds a
8 license, upon the ground that the applicant or the licensee has been
9 convicted of a crime substantially related to the qualifications,
10 functions, and duties of the licensee in question, the record of
11 conviction of the crime shall be conclusive evidence of the fact that
12 the conviction occurred, but only of that fact, and the board may
13 inquire into the circumstances surrounding the commission of the
14 crime in order to fix the degree of discipline or to determine if the
15 conviction is substantially related to the qualifications, functions,
16 and duties of the licensee in question.

17 As used in this section, 'license' includes 'certificate,' 'permit,'
18 'authority,' and 'registration.'

19 10. Title 16, California Code of Regulations, section 1769, states:

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

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

26 (2) Total criminal record.

27 (3) The time that has elapsed since commission of the act(s) or
28 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 Title 16, California Code of Regulations, section 1770, states:

12 For the purpose of denial, suspension, or revocation of a personal or
13 facility license pursuant to Division 1.5 (commencing with Section
14 475) of the Business and Professions Code, a crime or act shall be
15 considered substantially related to the qualifications, functions or
16 duties of a licensee or registrant if to a substantial degree it
17 evidences present or potential unfitness of a licensee or registrant to

1 perform the functions authorized by his license or registration in a
2 manner consistent with the public health, safety, or welfare.

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(September 7, 2011 Conviction of DUI on November 11, 2010)**

10 13. Respondent is subject to disciplinary action under Code section 4301, subdivision (l)
11 for conviction of a crime substantially related to the qualifications, functions and duties of a
12 Pharmacy Technician in that in *The People of the State of California v. Rosa Guadalupe Zaia*,
13 Riverside Superior Court, Case No. RIM 10016185, Respondent was convicted on her guilty plea
14 of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of Vehicle
15 Code section 23152(b) on September 7, 2011.

16 14. The circumstances are as follows. On November 11, 2010, an Officer from the
17 Riverside CHP responded to a traffic collision at about 1811 hours. Upon arriving at the scene,
18 the officer saw a blue pickup truck parked along the right side of the road with the front right tire
19 flat and the curtain airbags deployed. The officer was unable to locate the driver of the truck near
20 the vehicle. The officer was contacted by the driver of another vehicle who advised the officer
21 that the driver of the pickup was the passenger in his vehicle. Respondent was identified as the
22 driver of the pickup truck. Respondent was unable to exit from the vehicle without assistance.
23 She lost her balance and almost fell three times as she walked to the patrol car. The officer had
24 Respondent lean against the patrol car but she fell down again as she reached for her purse, which
25 was on the hood of the patrol car. The officer noticed the odor of an alcoholic beverage on
26 Respondent and her breath. Respondent admitted to the officer that she had consumed alcoholic
27 beverages. No Field Sobriety Tests were performed due to Respondent's inability to maintain her
28 balance.

1 convicted on her guilty plea of driving under the influence of alcohol with a B.A.C. of 0.08% or
2 greater in violation of Vehicle Code section 23152(b), a misdemeanor. As a result of the
3 conviction, Respondent was sentenced to 3 years information probation, attend and complete a 6
4 month Level 2 First Offender Alcohol Program, attend and complete a Mothers' Against Drunk
5 Driving (MADD) Victim's Impact Panel or 2 AA meetings in lieu of the Impact Panel, complete
6 10 days of community service, and payment of fines and fees in the amount of \$1,510.50.

7 21. The circumstances leading to the October 4, 2007 conviction are as follows. At about
8 1440 hours on May 18, 2007, an officer of the Orange County CHP observed two vehicles
9 stopped on the right shoulder of Interstate 5 during a routine patrol. The officer was advised that
10 a collision had occurred. When the officer contacted Respondent, who was the driver of the
11 Chevrolet pickup truck, the officer smelled the odor of an alcoholic beverage on Respondent's
12 breath. Respondent admitted she drank one "spritzer" earlier at Bloomingdales. The officer
13 noted that Respondent's eyes were red and watery and that Respondent's gait was unsteady.
14 Respondent was not able to successfully complete the Field Sobriety Tests. Preliminary Alcohol
15 Screening results were 0.215% at 1514 hours and 0.213% at 1516 hours. A blood sample was
16 obtained and tested, which indicated a B.A.C. of 0.20%.

17 **DISCIPLINE CONSIDERATIONS**

18 22. To determine the degree of discipline, if any, to be imposed on Respondent,
19 Complainant alleges that on or about February 4, 2010, the Board of Pharmacy issued a Letter of
20 Admonishment to Respondent in Case Number CI 2007 37037 for the October 4, 2007 conviction
21 in *The People of the State of California v. Rosa Guadalupe Zaia*, Orange County Superior Court,
22 Harbor Justice Center, Case No. 07SM02118, in which Respondent was convicted on her guilty
23 plea of driving under the influence of alcohol with a B.A.C. of 0.08% or greater in violation of
24 Vehicle Code section 23152(b).

25 **PRAYER**

26 * WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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1. Revoking or suspending Pharmacy Technician Registration Number 38750, issued to Rosa G. Zaia;
2. Ordering Rosa G. Zaia to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and,
3. Taking such other and further action as deemed necessary and proper.

DATED: 10/9/12 Virginia Herold

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

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