

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Senior Assistant Attorney General
3 JAMES M. LEDAKIS
Supervising Deputy Attorney General
4 State Bar No. 132645
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2105
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 5580

13 **ORLANDO RENDON**
10881 Blake Street
14 Garden Grove, CA 92843

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH 139996**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
22 2. On April 24, 2014, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 139996 to Orlando Rendon (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on March 31, 2016, unless renewed.

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a), of the Code provides that every license issued by
6 the Board may be suspended or revoked.

7 5. Section 4300.1 of the Code states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued
9 license by operation of law or by order or decision of the board or a court of law,
10 the placement of a license on a retired status, or the voluntary surrender of a
11 license by a licensee shall not deprive the board of jurisdiction to commence or
12 proceed with any investigation of, or action or disciplinary proceeding against, the
13 licensee or to render 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
15 evaluate 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 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol
23 and drug problem assessment program under Article 5 (commencing with Section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
25 any agency established under Division 2 (commencing with Section 500) of this
26 code, or any initiative act referred to in that division, from taking disciplinary
27 action against a licensee or from denying a license for professional misconduct,
28 notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest. This section shall not be construed to apply to any drug
diversion program operated by any agency established under Division 2
(commencing with Section 500) of this code, or any initiative act referred to in
that division.

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. Section 4022 of the Code states

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: “Caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import.

(b) Any device that bears the statement: “Caution: federal law restricts this device to sale by or on the order of a _____,” “Rx only,” or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. 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 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.

....

1 (j) The violation of any of the statutes of this state, of any other state, or of
2 the United States regulating controlled substances and dangerous drugs.

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

6

7 (p) Actions or conduct that would have warranted denial of a license.

8

9 11. Health & Safety Code section 11055, subdivision (b) in pertinent part states:

10 Any of the following substances, except those narcotic drugs listed in
11 other schedules, whether produced directly or indirectly by extraction from
12 substances of vegetable origin, or independently by means of chemical synthesis,
13 or by combination of extraction and chemical synthesis

14 (1) Opium, opiate, and any salt, compound, derivative, or
15 preparation of opium or opiate, with the exception of naloxone hydrochloride (N-
16 allyl-14-hydroxy-nordihydromorphinone hydrochloride), but including the
17 following

18

19 (I) Hydrocodone.

20

21 12. Health & Safety Code section 11350, subdivision (a) states:

22 Except as otherwise provided in this division, every person who possesses
23 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
24 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
25 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
26 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
27 substance classified in Schedule III, IV, or V which is a narcotic drug, unless
28 upon the written prescription of a physician, dentist, podiatrist, or veterinarian
licensed to practice in this state, shall be punished by imprisonment pursuant to
subdivision (h) of Section 1170 of the Penal Code.

13. Health & Safety Code section 11375 in pertinent part states:

. . . .

(b) (2) Every person who possesses any controlled substance specified
in subdivision (c), unless upon the prescription of a physician, dentist, podiatrist,
or veterinarian, licensed to practice in this state, shall be guilty of an infraction or
a misdemeanor.

(c) This section shall apply to any material, compound, mixture, or
preparation containing any of the following substances:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

-
- (4) Diazepam.
-
- (12) Alprazolam.
-

REGULATORY PROVISIONS

14. California Code of Regulations, title 16, section 1769, 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.
- (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.

15. 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.

COST RECOVERY

16. 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

///

1 being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs
2 may be included in a stipulated settlement.

3 **DRUGS AT ISSUE**

4 17. Alprazolam is a Schedule IV controlled substance as designated by Health and
5 Safety Code section 11057, subdivision (d)(1) and is a dangerous drug under section 4022.

6 18. Diazepam is a Schedule IV controlled substance as designated by Health and
7 Safety Code, section 11057, subdivision (d)(9) and is a dangerous drug under Code section 4022.

8 19. Hydrocodone is a Schedule II controlled substance as designated by Health and
9 Safety Code section 11055, subdivision (b)(1)(I), and is a dangerous drug under Code section
10 4022.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Unprofessional Conduct – Violation of Drug Laws)**

13 20. Respondent has subjected his Pharmacy Technician Registration to discipline
14 under Code sections 490 and 4301, subdivision (j), in that he violated Health and Safety Code
15 (HSC) sections 11350, subdivision (a) and 11375, subdivision (b)(2), statutes of the State of
16 California regulating controlled substances. The circumstances are as follows:

17 a. On June 16, 2014, Respondent was found in possession of two
18 hydrocodone pills, nine diazepam pills, and nine alprazolam pills at a parking lot in Garden
19 Grove, California. Respondent was subsequently transported to the Orange County Jail on
20 charges of violation of HSC section 11350, subdivision (a), and Code section 4060, possession
21 of a controlled substance, without prescription of a physician.

22 b. Due to Respondent's admission of owning the 20 pills of controlled
23 substances, a criminal action was filed against him. On January 23, 2015, in a criminal
24 proceeding entitled *The People of the State of California vs. Orlando Rendon*, in Orange County
25 Superior Court, West Justice Center, Case Number 14WF2905, Respondent pled guilty to
26 violating HSC section 11350, subdivision (a), possession of hydrocodone without prescription, a
27 felony, and two counts of violation of HSC section 11375, subdivision (b)(2), possession of
28 alprazolam and diazepam, misdemeanors.

1 c. As a result of his guilty plea, on January 23, 2015, Respondent was
2 granted deferred entry of judgment under Penal Code (PC), section 1000. Respondent was
3 required to pay fees, provide proof of enrollment in an 18-month drug diversion program by
4 February 23, 2015, and provide proof of successful completion of the PC section 1000 program
5 by July 23, 2018. Respondent was also required to return to court for sentencing on July 25,
6 2016, and with successful completion of the PC section 1000 program, deferred entry of
7 judgment dismissal.

8 SECOND CAUSE FOR DISCIPLINE

9 **(Jan. 23, 2015 Conviction for Driving with a BAC .08 Percent or More on Nov. 28, 2014)**

10 21. Respondent has subjected his Pharmacy Technician Registration to discipline
11 under Code sections 490 and 4301, subdivision (I), in that he was convicted of crimes that are
12 substantially related to the qualifications, functions, and duties of a registered pharmacy
13 technician. The circumstances are as follows:

14 a. On January 23, 2015, in a criminal proceeding entitled *The People of the*
15 *State of California v. Orlando Rendon*, in Orange County Superior Court, West Justice Center,
16 Criminal Division Case Number 14WM11612, Respondent was convicted on his plea of guilty
17 of violating Vehicle Code (VC) section 23152, subdivisions (a), driving while under the
18 influence of alcohol (DUI), and (b), driving with a blood alcohol concentration (BAC) of 0.08
19 percent or more, both misdemeanors. A misdemeanor charge for violation of VC section 23103,
20 subdivision (a), reckless driving, was dismissed under a plea bargain.

21 b. As a result of the convictions, on January 23, 2015, Respondent was
22 sentenced to three years informal probation under standard alcohol conditions. Respondent was
23 ordered to pay fines, fees, restitution, and assessments, and attend and satisfactorily complete a
24 three-month first offender alcohol program and a Mothers Against Drunk Driving Victim's
25 Impact Panel session.

26 c. The facts that led to the conviction are that on November 28, 2014,
27 Respondent overtook a patrol vehicle while driving eastbound at a speed of about 100 miles per
28 hour along state route SR-22, east of Brookhurst Street in Garden Grove, California. The

1 California Highway Patrol (CHP) officer driving the patrol vehicle followed Respondent at about
2 120 miles per hour before initiating an enforcement stop. Respondent complied on the third
3 request and exited the freeway at Fairview Drive. Upon contact with Respondent, the officer
4 immediately smelled alcohol coming from inside Respondent's car. Respondent was told to exit
5 his car and stand on a curb. While walking towards the curb, the officer noticed Respondent's
6 unsteadiness on his feet. When asked for his driver's license, Respondent was slow and
7 deliberate in his movements while retrieving his wallet. While answering the officer's questions,
8 the smell of alcohol emitted from Respondent's breath; his speech was slow, sluggish, and
9 slurred; and his eyes were red and glassy. Respondent admitted to drinking five shots of vodka
10 earlier. Respondent failed to perform a series of field sobriety tests as explained and
11 demonstrated. Respondent provided breath samples for the preliminary alcohol screen, which
12 indicated a BAC of .117 percent and .111 percent after two minutes. Respondent was
13 subsequently arrested and transported to the Orange County Jail, where he provided a blood
14 sample, which tested a BAC of .10 percent.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

17 22. Respondent has subjected his Pharmacy Technician Registration to discipline
18 under Code section 4301, subdivision (h) in that on November 28, 2014, he used alcohol, as
19 described in paragraph 21, above, which is incorporated by reference, to the extent and in a
20 manner that was dangerous and injurious to himself and to the public.

21 **FOURTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct - Conviction of Alcohol Related Misdemeanors)**

23 23. Respondent has subjected his Pharmacy Technician Registration to discipline
24 under Code section 4301, subdivision (k) in that on January 23, 2015, he was convicted of more
25 than one misdemeanor involving the use or consumption of alcohol.

26 ///

27 ///

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Conduct That Would Have Warranted Denial of a License)**

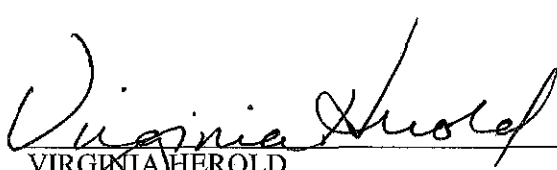
3 24. Respondent has subjected his Pharmacy Technician Registration to discipline
4 under Code section 4301, subdivision (p), in that Respondent was convicted of two
5 misdemeanors and committed one felony and two misdemeanor violations of drug laws, conduct
6 that would have warranted the denial of a pharmacy technician registration under Code section
7 480, subdivision (a)(1), as detailed in paragraphs 20 to 23, above.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH
12 139996, issued to Orlando Rendon;
- 13 2. Ordering Orlando Rendon to pay the Board of Pharmacy the reasonable costs of
14 the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3; and
- 16 3. Taking such other and further action as deemed necessary and proper.
- 17
18
19

20 DATED: 10/20/15


21 VIRGINIA HEROLD
22 Executive Officer
23 Board of Pharmacy
24 Department of Consumer Affairs
25 State of California
26 Complainant

24 SD2015802080
81152246.doc