

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

In the Matter of the Accusation Against:

**ANDREW LOPEZ**  
1272 Durkin Street  
Camarillo, CA 93010

Pharmacy Technician Registration No.  
TCH 36439

Respondent.

Case No. 3507

OAH 2013040749

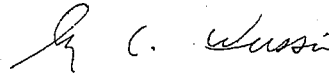
**DECISION AND ORDER**

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 on December 20, 2013.

It is so ORDERED on November 20, 2013.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STAN C. WEISSER  
Board President

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No. TCH 36439,

Respondent[s].

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**PROPOSED DECISION**

This matter came on regularly for hearing on September 24, 2013, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Virginia Herold (Complainant) was represented by Alvaro Mejia, Deputy Attorney General.

No appearance was made by or on behalf of Respondent, Andrew Lopez, despite his having been properly served with notice of the date, time, and place of the hearing.

Documentary evidence was received. The record was closed on the hearing date, and the matter was submitted for decision.

**FACTUAL FINDINGS**

1. Complainant made the Accusation in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
2. On February 9, 2001, the Board issued Pharmacy Technician Registration No. TCH 36439 to Respondent. The license was in full force and effect at all relevant times. It expired on September 30, 2012. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

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3. On October 19, 2005, in the Superior Court of California, County of Ventura, in Case Number 2005032176 M A, Respondent pled nolo contendere and was convicted of violating Vehicle Code section 23152, subdivision (b) (driving while having a 0.08 percent or higher blood alcohol concentration), a misdemeanor substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

4. Respondent was placed on formal probation for a period of 36 months under various terms and conditions including incarceration in the Ventura County Jail for 48 hours, payment of fines and fees totaling \$2,768 which was reduced to \$1,649 by a credit for time served, a restriction on his driving privileges for 90 days, and a prohibition against driving with any intoxicant in his body.

5. Respondent suffered one probation violation during his probationary period. However, on June 8, 2007, the court ordered his probation terminated. The conviction was expunged on June 15, 2007.

6. The facts and circumstances underlying the conviction are that Ventura County Sheriff's officers saw Respondent driving erratically. He was arrested for driving under the influence of alcohol after taking field sobriety tests.

7. On July 24, 2006, in the Superior Court of California, County of Ventura, in Case Number 2006017702 M A, Respondent pled guilty and was convicted of violating Vehicle Code section 14601.5, subdivision (a), (driving while license is suspended/revoked), a misdemeanor substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

8. Respondent was placed on Conditional Revocable Release for a period of 36 months under various terms and conditions including payment of fines and fees totaling \$293, and incarceration in the Ventura County Jail for 10 days. Work release was approved.

9. On June 15, 2007, the court ordered the plea set aside and vacated, a plea of not guilty entered, and the complaint dismissed pursuant to Penal Code section 1203.4.

10. The facts and circumstances underlying the conviction are that Ventura County Sheriff's officers conducted a traffic stop on Respondent's car and determined that Respondent was driving while his driver's license was suspended.

11. On June 7, 2011, in the Superior Court of California, County of Ventura, in Case Number 2009039818 M A, Respondent was convicted by a jury of violating Penal Code sections 148, subdivision (a)(1) (resisting, obstructing, delaying of a peace officer or EMT), and 294, subdivision (b)(2)(A) (graffiti vandalism less than \$400), both misdemeanors substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

12. Respondent was placed on Conditional Revocable Release for a period of 36 months under various terms and conditions including incarceration in the Ventura County Jail for 30 days with credit for four days served, payment of fines and fees totaling \$3,100, and payment of victim restitution in an amount to be determined by his probation officer.

13. The facts and circumstances underlying the conviction were not disclosed by the evidence.

14. No evidence of mitigation, extenuation, or rehabilitation was offered into evidence.

15. The Board incurred costs, including attorney fees, in the total sum of \$7,690, in connection with the investigation and prosecution of this action. The costs include 13.5 hours of pleading preparation by two paralegals in June and July of 2010, at an hourly rate of \$120. The costs also include 11.5 hours of investigation time by the same two paralegals. All of the time for pleading preparation and investigation occurred before Respondent suffered his third conviction. Those costs are excessive. Pleading preparation time is reduced to five hours. Investigation time is reduced to six hours. Complainant's costs are thereby reduced by \$1,620. Complainant shall be awarded costs totaling \$6,070.

#### LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacy technician license pursuant to Business and Professions Code<sup>1</sup> sections 490 and 4301, subdivision (i), in conjunction with California Code of Regulations, title 16, section 1770, for conviction of substantially related crimes, as set forth in Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13.

2. Cause exists to discipline Respondent's pharmacy technician license pursuant to Code section 4301, subdivision (h), for use of alcoholic beverages to the extent to be dangerous to oneself and others, as set forth in Findings 3, 4, 5, and 6.

3. Cause exists to discipline Respondent's pharmacy technician license pursuant to Code section 4301, subdivision (f), for conduct involving moral turpitude and/or corruption, as set forth in Findings 11 and 12.

4. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 15.

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<sup>1</sup> All statutory references are to the Business and Professions Code unless otherwise indicated.

5. Respondent has suffered three criminal convictions in a span of less than six years. He did not appear at the administrative hearing to offer any evidence that might militate against the revocation of his license. In the absence of such evidence, license revocation is warranted to ensure the public's protection.

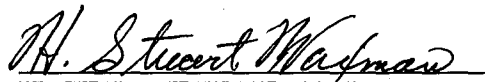
### ORDER

1. Pharmacy technician license number TCH 36439, issued to Respondent, Andrew Lopez, is revoked. Respondent shall relinquish his technician license to the Board within ten days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked technician license for three years from the effective date of this decision.

2. A condition of reinstatement shall be that Respondent is certified as defined in Business and Professions Code section 4202, subdivision(a)(4) and provides satisfactory proof of certification to the Board.

3. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$6,070 within 15 days of the effective date of this decision.

Dated: October 3, 2013

  
H. STUART WAXMAN  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
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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:  
12 **ANDREW LOPEZ**  
1272 Durkin Street  
13 Camarillo, CA 93010  
14  
15 **Pharmacy Technician Registration**  
**No. TCH 36439**  
16  
17 **Respondent.**

Case No. 3507

**ACCUSATION**

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
22 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
23 2. On or about February 9, 2001, the Board of Pharmacy ("Board") issued Pharmacy  
24 Technician Registration No. TCH 36439 to Andrew Lopez ("Respondent"). The Pharmacy  
25 Technician Registration was in full force and effect at all times relevant to the charges brought  
26 herein and will expire on September 30, 2012, unless renewed.

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1 **JURISDICTION**

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

5 **STATUTORY PROVISIONS**

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

10 5. Section 490 states:

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

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

19 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
20 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
21 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
22 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
23 made suspending the imposition of sentence, irrespective of a subsequent order under the  
24 provisions of Section 1203.4 of the Penal Code."

25 6. Section 4300 provides, in pertinent part, that every license issued by the Board is  
26 subject to discipline, including suspension or revocation.

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1       7.    Section 4301 states:

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

5       ....

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

9       ....

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

15      "(i)  Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or  
16   administering or offering to sell, furnish, give away, or administer any controlled substance to an  
17   addict.

18      ....

19      "(l)  The conviction of a crime substantially related to the qualifications, functions, and  
20   duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
21   (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
22   substances or of a violation of the statutes of this state regulating controlled substances or  
23   dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
24   record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
25   The board may inquire into the circumstances surrounding the commission of the crime, in order  
26   to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
27   or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
28   qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or



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

#### 8 REGULATORY PROVISIONS

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

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

#### 16 COST RECOVERY

17 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
18 administrative law judge to direct a licentiate found to have committed a violation or violations of  
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
20 enforcement of the case.

#### 21 FIRST CAUSE FOR DISCIPLINE

##### 22 (Criminal Convictions)

23 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
24 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in  
25 that Respondent was convicted of crimes substantially related to the qualifications, functions or  
26 duties of a licensed pharmacy technician, as follows:

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1           a.       On or about October 19, 2005, after pleading nolo contendere, Respondent was  
2 convicted of one misdemeanor count of violation Vehicle Code section 23152, subdivision (b)  
3 [driving while having 0.8% and more, of alcohol in his blood], in the criminal proceeding entitled  
4 *The People of the State of California vs. Andrew Lopez* (Super. Ct. Ventura County, 2005, No.  
5 2005032176). The Court sentenced Respondent to 48 hours in custody and placed him on  
6 probation for a period of 36 months, on specific terms conditions. The circumstances  
7 surrounding the conviction are that on or about September 16, 2005, the Ventura Sheriff's  
8 Department arrested Respondent for driving under the influence of alcohol.

9           b.       On or about July 24, 2006, after pleading guilty, Respondent was convicted of  
10 one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) [driving while  
11 license suspended/revoked], in the criminal proceeding entitled *The People of the State of*  
12 *California vs. Andrew Lopez* (Super. Ct. Ventura County, 2006, No. 2006017702). The Court  
13 sentenced Respondent to 10 days in custody and placed him on probation for 36 months, on  
14 specific terms and conditions. The circumstances surrounding the conviction are that on or about  
15 May 8, 2006, Respondent was driving a vehicle while his license was suspended or revoked.

16           c.       On or about June 7, 2011, after a jury trial, Respondent was convicted of one  
17 misdemeanor count of violating Penal Code section 148, subdivision (a)(1) [resist, obstruct, delay  
18 of peace officer] and convicted of one misdemeanor count of violating Penal Code section 594,  
19 subdivision (b)(2)(A) [graffiti vandalism, \$400 or less in damage], in the criminal proceeding  
20 entitled *The People of the State of California vs. Andrew Lopez* (Super. Ct. Ventura County,  
21 2009, No. 2009039818). The Court sentenced Respondent to 30 days in custody and placed him  
22 on probation for 36 months, on specific terms and conditions. The circumstances surrounding the  
23 conviction are that on or about October 29, 2009, Respondent unlawfully resisted, delayed, and  
24 obstructed Ventura County Sheriff's Deputy Marrs and unlawfully and maliciously defaced with  
25 graffiti and damaged and destroyed a Ventura County Sheriff's patrol vehicle.

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**SECOND CAUSE FOR DISCIPLINE**

**(Use of Alcohol Beverages to the Extent to be Dangerous to Oneself)**

11. Respondent is subject to disciplinary action under section 4301, subdivision (h), of the Code, on the grounds of unprofessional conduct, in that on or about September 16, 2005, Respondent used and consumed alcoholic beverages to the extent or in a manner as to be dangerous and injurious to himself and others. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 10, subparagraph (a), as though set forth fully.

**THIRD CAUSE FOR DISCIPLINE**

**(Act Involving Moral Turpitude and/or Corruption)**

12. Respondent is subject to disciplinary action under section 4301, subdivision (f), of the Code, on the grounds of unprofessional conduct, in that on or about October 29, 2009, Respondent engaged in conduct constituting moral turpitude and/or corruption. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraph 10, subparagraph (c), as though set forth fully.

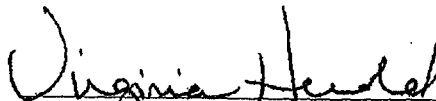
**PRAYER**

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 36439, issued to Respondent.
2. Ordering Respondent to pay the Board 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: \_\_\_\_\_

8/29/12



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

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