

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

In the Matter of the Accusation Against:

MARTIN OMAR PEREZ

3228 Florinda Street
Pomona, CA 91767

Pharmacy Technician No. TCH 50207

Respondent.

Case No. 3509

OAH No. 2011010124

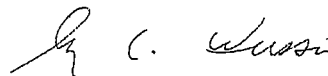
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on October 19, 2011.

It is so ORDERED September 19, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on July 13, 2011.

Christina Thomas, Deputy Attorney General, represented Virginia Herold (Complainant) Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Martin Omar Perez (Respondent) represented himself.

Oral and documentary evidence was received

The case was submitted for decision on July 13, 2011.

PARTIES

1. Complainant filed the Accusation in this proceeding in her official capacity.
2. On September 17, 2003, the Board issued Pharmacy Technician Registration No. TCH 50207 to Respondent. The Pharmacy Technician Registration was in effect at all times relevant to the charges brought herein except that the registration expired on June 30, 2011 and has not been renewed. Business and Professions Code section 118,

subdivision (b) 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. (Respondent's license may be renewed within three years of its expiration date. Business and Professions Code section 4402.)

FACTUAL FINDINGS

3. On March 20, 2009, in the California Superior Court, County of Los Angeles, in case number 9PK01214, Respondent, upon his nolo contendere, plea was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol with the admission of a prior Vehicle Code section 23152, subdivision (a) violation, a misdemeanor.¹ The court placed Respondent on summary probation for a period of 3 years upon certain terms and conditions including serving 10 days in the county jail, paying fines and fees of \$1,706.00, and successfully completing an 18 month SB 83 Alcohol program. In lieu of the \$390.00 portion of the fine, Respondent was permitted to perform 80 hours of community service. Respondent has completed the first portion of the alcohol program. Respondent's probation has been extended as a result of his conviction discussed below. His probation will now end on June 30, 2014.

4. On November 20, 2007, in the California Superior Court, County of Los Angeles, in case number 7PK08394, Respondent, upon his guilty plea, was convicted of violating Vehicle Code 10851, subdivision (a), taking a vehicle without the owner's permission, a misdemeanor. The court placed Respondent on summary probation for 3 years upon certain terms and conditions including, paying \$120.00 to the court and performing 30 days of community service. This case concerned Respondent driving his mother's automobile without her permission.

5. On December 11, 2006, in the California Superior Court, County of San Bernardino, Respondent, upon his guilty plea, was convicted of public drunkenness, a misdemeanor. Respondent was ordered to pay a \$100.00 fine.

6. At the time of the hearing in this matter, Respondent disclosed that in June 2011, he had been convicted of possession of a controlled substance.- Methamphetamines. The court put Respondent on probation for a period of 3 years and ordered him to pay a fine of \$250 by December 11, 2011. The court also ordered Respondent to successfully complete a Proposition 36 Rehabilitation Program. Respondent is to begin the program in the immediate future. In this case, Respondent was stopped by a policeman while he was riding his bicycle and the drugs were found. Respondent had won the drugs in a dart game. He was going to try to sell the drugs as he does not personally use drugs.

¹ On July 15, 2001, Respondent was convicted of one misdemeanor count of violating Vehicle Code 23152, subdivision (a), driving under the influence of alcohol in Los Angeles Superior Court case number IJM05349.

7. Respondent admits that he has an alcohol problem. He is hoping to get a handle on this through the Proposition 36 Program the court has ordered him to complete.

8. Respondent is not currently employed. He was employed as a Pharmacist Technician from 1999 to 2007.

9. No other administrative actions have been filed against Respondent's license.

10. Respondent lives with his girlfriend. He has no dependents.

11. At the present time, Respondent is not interested in reviving his Pharmacy Technician Registration. However, he does look forward to straightening out his life.

STATUTORY PROVISIONS

1. This Accusation is brought before the Board under the authority of the following statutes and regulations. All references are to the Business and Professions Code unless otherwise indicated.

2. Section 490 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 related to the qualifications, functions, or duties of the business or profession for which the license was issued.

3. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

4. 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 procured by fraud or misrepresentation or 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.

....
(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.

....
(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.

COST BILL

1. Pursuant to Business and Profession Code section 125.3, the Board submitted a cost bill in the amount of \$2,207.50 for its investigation and enforcement costs in this proceeding.

2. The amount submitted is reasonable.

LEGAL CONCLUSIONS

1. Respondent is subject to disciplinary action under Business and Profession Code sections 490, 4300 and 4301, subdivision (1), on the grounds of unprofessional conduct, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, function or duties of a pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare. Factual Findings 3 through 6.

2. Respondent is subject to disciplinary action under Business and Profession Code sections 4300 and 4301, subdivision (k), on the grounds of unprofessional conduct, in that Respondent has sustained more than one misdemeanor conviction involving the use, consumption, or self-administration of alcoholic beverages. Factual Findings 3 and 5.

3. Respondent is subject to disciplinary action under Business and Professions Code section 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol to the extent or in a manner as to be dangerous or injurious to himself or others and /or to the extent that his use impairs his ability to conduct with safety to the public the practice authorized by his license. Factual Findings 3 through 6.

4. Respondent is subject to disciplinary action under Business and Professions Code sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. Factual Findings 3 through 6.

5. Respondent is subject to disciplinary action under Business and Professions Code subdivision (o) in that Respondent committed acts constituting unprofessional

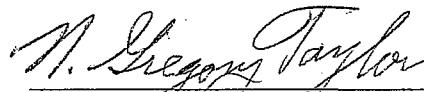
conduct. In that he violated state laws and regulations governing pharmacy personnel. Factual Findings 3 through 7.

6. Respondent admits that he has had and continues to have a lot of problems. He is beginning to try to get things in better order. He is looking forward to the entering the Proposition 36 Rehabilitation Program ordered by the court in his most recent conviction. It is his hope that it will be of assistance to him in getting a better handle on his situation. He is wished success in the new program.

ORDER

Respondent Martin Omar Perez' Pharmacy Technician Registration No. TCH 50207 is revoked. Respondent is ordered to pay the Board within 30 days of the effective date of this decision, at its Sacramento address, \$2,207.50 to reimburse the Board for its costs of suit in this proceeding.

Dated: July 22 2011.



N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings

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7

8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
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11 In the Matter of the Accusation Against:

Case No. 3509

12 **MARTIN OMAR PEREZ**
3228 Florinda St.
13 Pomona, CA 91767

ACCUSATION

14 Pharmacy Technician Registration No. TCH 50207

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 17, 2003, the Board issued Pharmacy Technician Registration
23 No. TCH 50207 to Martin Omar Perez (Respondent). The Pharmacy Technician Registration was
24 in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2011, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board under the authority of the following
28 laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

1
2 4. Section 118, subdivision (b), provides that the suspension, expiration, surrender or
3 cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
4 action during the period within which the license may be renewed, restored, reissued or
5 reinstated.

6 5. Section 490 provides, in pertinent part, that a board may suspend or revoke a license
7 on the ground that the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, or duties of the business or profession for which the license was issued.

9 6. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or
10 revoked."

11 7. Section 4301 states, in pertinent part:

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

15

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

19

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

25

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

1 a. On or about March 20, 2009, after pleading nolo contendere, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 23152(a) [driving with a
3 greater than 0.08 blood alcohol, with admission of prior Veh. Code § 23152(a) conviction¹] in the
4 criminal proceeding entitled *The People of the State of California v. Martin Omar Perez* (Super.
5 Ct. Los Angeles County, 2009, No. 9PK01214). The Court sentenced Respondent to ten (10)
6 days in jail or tree farm service, placed him on three (3) years probation, ordered him to attend
7 an 18-month alcohol program, and ordered him to pay \$1706.00 or perform 80 hours of
8 community service. The circumstances underlying the conviction are that on or about February 3,
9 2009, Respondent was found to be driving a vehicle while having a tested 0.13/0.14% BAC.

10 b. On or about November 20, 2007, after pleading guilty, Respondent was convicted of
11 one misdemeanor count of violating Vehicle Code section 10851(a) [take vehicle without owner's
12 consent] in the criminal proceeding entitled *The People of the State of California v. Martin Omar*
13 *Perez* (Super. Ct. Los Angeles County, 2007, No. 7PK08394). The Court sentenced Respondent
14 to nine (9) days in jail, placed him on three (3) years probation, and ordered him to pay \$100 to
15 the victim restitution fund. On or about May 7, 2008, the Court sentenced Respondent to 30 days
16 of tree farm service. The circumstances underlying the conviction are that on or about November
17 15, 2007, Respondent took his mother's car without her permission, went out drinking, and
18 without having a place to sleep and not welcome at his sister's home, broke into his sister's
19 house, crawled through his nephew's bedroom window, and fell asleep on the floor, where on or
20 about November 16, 2007, he was found and arrested.

21 c. On or about December 11, 2006, after pleading guilty, Respondent was convicted of
22 one misdemeanor count of violating Penal Code section 647(f) [public intoxication] in the
23 criminal proceeding entitled *The People of the State of California v. Martin Omar Perez* (Super.
24 Ct. San Bernardino County, 2006, No. MWV108530). The Court ordered Respondent to pay a
25 \$100 fine. The circumstances underlying the conviction are that on or about October 7, 2006,

26 ¹ On or about July 15, 2001, Respondent was convicted of one misdemeanor count of
27 violating Vehicle Code section 23152(a) [driving while under the influence of alcohol] in the
28 criminal proceeding entitled *The People of the State of California v. Martin Omar Perez* (Super.
Ct. Los Angeles County, 2001, No. 1JM05349).

1 Montclair Police Department issued Citation, Notice and Promise to Appear, No. 173401 to
2 Respondent for public intoxication.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Convictions of Crimes Involving Alcohol)**

5 11. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (k), on the grounds of unprofessional conduct, in that Respondent sustained more
7 than one misdemeanor conviction involving the use, consumption, or self-administration of
8 alcoholic beverages. Complainant refers to and by this reference incorporates the allegations set
9 forth above in paragraph 10, subparagraphs a, b and c, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Dangerous Use of Alcohol)**

12 12. Respondent is subject to disciplinary action under sections 4300 and 4301,
13 subdivision (h), on the grounds of unprofessional conduct, in that Respondent used alcohol to the
14 extent or in a manner as to be dangerous or injurious to himself or others and / or to the extent
15 that his use impairs his ability to conduct with safety to the public the practice authorized by his
16 license. Complainant refers to and by this reference incorporates the allegations set forth above
17 in paragraphs 10 - 11, inclusive, as though set forth fully.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Act Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

20 13. Respondent is subject to disciplinary action under sections 4300 and 4301,
21 subdivision (f), on the grounds of unprofessional conduct, in that Respondent committed acts
22 involving moral turpitude, dishonesty, fraud, deceit, or corruption. Complainant refers to and by
23 this reference incorporates the allegations set forth above in paragraphs 10 - 12, inclusive, as
24 though set forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Unprofessional Conduct)**

27 14. Respondent is subject to disciplinary action under sections 4300 and 4301,
28 subdivision (o), in that Respondent committed acts constituting unprofessional conduct.

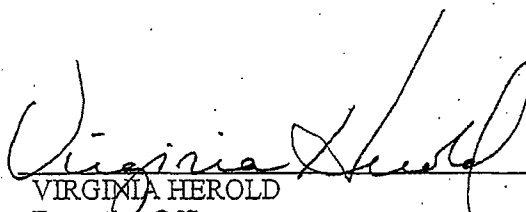
1 Complainant refers to and by this reference incorporates the allegations set forth above in
2 paragraphs 10 - 13, inclusive, as though set forth fully.

3 PRAYER

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

- 6 1. Revoking or suspending Pharmacy Technician Registration No. TCH 50207, issued
7 to Respondent;
- 8 2. Ordering Respondent to pay the Board the reasonable costs of the investigation and
9 enforcement of this case, pursuant to section 125.3; and
- 10 3. Taking such other and further action as deemed necessary and proper.

11
12
13 DATED: 5/6/10


14 VIRGINIA HEROLD
15 Executive Officer
16 Board of Pharmacy
17 Department of Consumer Affairs
18 State of California
19 Complainant

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