

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

In the Matter of the Accusation Against:

**ROGER ANTHONY CHAVEZ**

24469 Alves St.  
Hayward, CA 94544

Pharmacy Technician License No. TCH 63325

Respondent.

Case No. 3540

OAH No. 2010070632

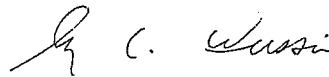
**DECISION**

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 February 17, 2011.

It is so ORDERED January 18, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

ROGER ANTHONY CHAVEZ  
Hayward, California

Pharmacy Technician License  
No. TCH 63325,

Respondent.

Case No. 3540

OAH No. 2010070632

**PROPOSED DECISION**

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on October 27, 2010.

Deputy Attorney General Justin R. Surber represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Roger Anthony Chavez appeared and represented himself.

The matter was submitted on October 27, 2010.

**FACTUAL FINDINGS**

1. On June 14, 2005, the Board of Pharmacy (board) issued Pharmacy Technician License Number TCH 63325 to respondent Roger Anthony Chavez. The license will expire on June 30, 2011, unless renewed. On June 16, 2010, complainant Virginia Herold, acting in her official capacity as Executive Officer of the board, issued an accusation against respondent. The accusation alleges that respondent unlawfully used and possessed controlled substances and dangerous drugs, that he unlawfully possessed drug paraphernalia, and that he has been convicted of crimes substantially related to the responsibilities of a pharmacy technician. Respondent filed a notice of defense.

*Stipulations*

2. Prior to hearing, respondent entered into written stipulations with the board in which he admitted the truth of the material allegations in the accusation.

*Possession of drugs and drug paraphernalia*

3. On July 9, 2008, respondent was a passenger in a vehicle that was stopped and searched by Mountain View police officers. The officers searched respondent's backpack and found a pipe used to ingest methamphetamine and five Vicodin pills for which respondent did not have a prescription. Between the front passenger seat where respondent was sitting and the door next to that seat, the officers found a plastic bag containing methamphetamine. Respondent told the police that he and the driver were coming from a party where they had planned to use methamphetamine, but did not, and that he had used methamphetamine on previous occasions.

4. Vicodin is a schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e)(4), and a dangerous drug pursuant to Business and Professions Code section 4022. Under Business and Professions Code section 4060 and Health and Safety Code section 11350, subdivision (a), it is unlawful to possess Vicodin without a prescription. Respondent violated these provisions by possessing Vicodin without a prescription.

5. Methamphetamine is a schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (d)(2), and a dangerous drug pursuant to Business and Professions Code section 4022. Under Business and Professions Code section 4060 and Health and Safety Code section 11377, subdivision (a), it is unlawful to possess methamphetamine without a prescription. Respondent violated these provisions by possessing methamphetamine without a prescription.

6. It is unlawful to possess a pipe that is used for the unlawful smoking of methamphetamine. (Health & Saf. Code, § 11364, subd. (a).) Respondent possessed a pipe in violation of this provision.

*Respondent's convictions*

7. On March 16, 2009, respondent was convicted on his pleas of nolo contendere of a violation of Penal Code section 487, subdivision (a) (grand theft), and a violation of Penal Code section 272, subdivision (a)(1) (contributing to the delinquency of a minor), both misdemeanors and crimes substantially related to the qualifications, functions or duties of a pharmacy technician. Imposition of sentence was suspended, and respondent was placed on court probation for two years on the conditions that he serve five days in jail, with credit for

time served and a recommendation to the Sheriff's Alternative Sentencing Bureau, and that he pay fines, fees and restitution.

8. The facts and circumstances giving rise to these offenses are that, on December 23, 2008, respondent stole merchandise from the Costco store in South San Francisco. On that day, respondent's sister went to the store first and stole cameras. Respondent returned to the store later with his sister's children, 14-year-old twins, and stole accessories for the cameras. Respondent planned to steal the merchandise with his niece and nephew, for whom the cameras and accessories were going to be Christmas gifts.

*Respondent's evidence*

9. Respondent is 25 years old. He is single and lives at home with his parents and his younger brother. He is a sophomore at Chabot College, where he is in the prepharmacy program. Respondent plans to transfer to a four-year school and study biochemistry.

10. Respondent is not employed at the present time. Over the past four years, he has worked in several pharmacies as a pharmacy technician, both part-time and full-time. He enjoys pharmacy work and, when he graduates from college, would like to work in biochemistry or as a pharmacist.

11. After the traffic stop on July 9, 2008, respondent entered a drug diversion program pursuant to Penal Code section 1000. In that program, respondent took eight education classes concerning the effects of drug use; addiction issues; and community resources for persons with drug program. Respondent also participated in 12 discussion groups. Respondent was tested for drug use four times while he was in the program and all his tests were negative. Respondent successfully completed the program in June 2009. At hearing, respondent stated that the classes "seemed pointless" because he did not feel that he needed to be there. Respondent testified that, on July 9, he was taking Vicodin because he had hit his leg on the corner of a table.

12. Respondent feels that he has learned a lot and that he is a completely different person today. He had never committed theft before December 2008 but, at that time, things were "going wrong" and he and his sister were struggling financially, so he decided to go along with his sister's plan to steal the merchandise from Costco.

13. In an unsigned letter, Pharmacy Technician Natasha Ng writes that she worked with respondent at Clayworth Healthcare and found that he was a good worker, that he was helpful to his co-workers, that he was always on time and that he had "good ethics." Ng believes that respondent should retain his license. Her letter does not reveal that she is familiar with any of the matters alleged in the accusation.

*Costs*

14. The board has incurred costs of \$4,597.50 in its investigation and enforcement of this case.

LEGAL CONCLUSIONS

*First cause for discipline*

1. Under Business and Professions Code sections 4301, subdivision (l), and 490, the board may take disciplinary action against a licensee who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a licensee. Cause exists under these provisions to take disciplinary action against respondent's license by reason of the convictions set forth in Findings 2 and 7, and each of them.

*Second cause for discipline*

2. Under Business and Professions Code section 4301, subdivision (f), the board may take disciplinary action against a licensee who has committed an act involving moral turpitude, dishonesty or deceit. Cause exists under these provisions to take disciplinary action against respondent's license by reason of the acts set forth in Findings 2 and 8.

*Third cause for discipline*

3. Under Business and Professions Code section 4301, subdivision (h), the board may take disciplinary action against a licensee who administers controlled substances to himself or herself. Cause exists under these provisions to take disciplinary action against respondent's license by reason of his admitted use of methamphetamine, and his use of Vicodin without a prescription, as set forth in Findings 2, 3 and 11.

*Fourth cause for discipline*

4. Under Business and Professions Code section 4301, subdivision (j), the board may take disciplinary action against a licensee who violates any statute regulating controlled substances and dangerous drugs. Cause exists under these provisions to take disciplinary action against respondent's license by reason of his possession of methamphetamine and Vicodin without a prescription, and his possession of a pipe used to smoke methamphetamine, as set forth in Findings 2 through 6.

*Disciplinary considerations*

5. The unlawful use or possession of controlled substances by a pharmacy technician is a matter of serious concern to the board; that concern is compounded when

there is also evidence of dishonesty by the technician. Even where there is no evidence of dishonesty, the board's disciplinary guidelines express "no tolerance" for licensees who abuse drugs and suggest that revocation is the appropriate discipline for such a technician unless there is strong evidence of rehabilitation.

Respondent's misconduct bears closely and directly upon his fitness to carry out the responsibilities of a pharmacy technician: it involves the unlawful possession and use of controlled substances, dishonesty, and the corruption of minors. At this time, respondent demonstrates little insight into the significance of his misconduct as measured against the responsibilities of a pharmacy licensee. It is acknowledged that respondent feels he has learned from his mistakes and believes he is a different person today. Respondent's uncorroborated testimony, however, is not sufficient to show that he can be trusted to safely perform the duties of a technician. It has been only two years since he committed the crimes at Costco, and he will remain on probation until 2011. Respondent has not made the strong showing of rehabilitation that his misconduct requires. At this time, it would be contrary to the public interest to all allow respondent to retain his pharmacy technician license, even on a probationary basis.

#### *Costs*

6. Complainant has requested that respondent be ordered to pay the board its costs of investigation and enforcement. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement are \$4,597.50. (Finding 14.) The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered in determining the reasonableness of costs. Those factors include whether the licensee has been successful at hearing in the getting charges dismissed or reduced; the licensee's good faith belief in the merits of his or 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 to the alleged misconduct. The factor of ability to pay militates in respondent's favor. Respondent is an unemployed, 25-year-old student. It is also noted that, prior to the hearing, respondent entered into written stipulations with the board in which he admitted the material facts alleged in the accusation. Respondent's cooperation should also be considered in assessing the reasonableness of costs. All things considered, it would be appropriate to reduce the cost recovery to \$2,000.

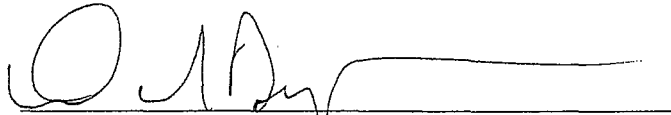
#### ORDER

1. Pharmacy Technician License Number TCH 63325, issued to respondent Roger Anthony Chavez, is revoked. Respondent shall relinquish his technician license to the board within ten (10) 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 (3) years from the effective date of this decision.

2. As a condition precedent to reinstatement of his revoked technician license, respondent shall reimburse the board for its costs of investigation and enforcement in the amount of \$2,000. Said amount shall be paid in full prior to the reapplication or reinstatement of his revoked technician license, unless otherwise ordered by the board.

DATED: January 18, 2010



DAVID L. BENJAMIN  
Administrative Law Judge  
Office of Administrative Hearings

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Attorney General of California  
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*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:  
11  
12 **ROGER ANTHONY CHAVEZ**  
24469 Alves Street  
Hayward, CA 94544  
13 **Pharmacy Technician Registration No. TCH**  
**63325**  
14  
15 Respondent.

Case No. 3540

**A C C U S A T I O N**

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 June 14, 2005, the Board of Pharmacy issued Pharmacy Technician  
22 Registration Number TCH 63325 to Roger Anthony Chavez (Respondent). The Pharmacy  
23 Technician Registration was in full force and effect at all times relevant to the charges brought  
24 herein and will expire on June 30, 2011, 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."

5. 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:

...

"(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.

...

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

...

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

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

10 6. Section 4060 of the Code states:

11 "No person shall possess any controlled substance, except that furnished to a person upon  
12 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
13 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified  
14 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a  
15 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,  
16 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of  
17 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not  
18 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,  
19 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified  
20 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly  
21 labeled with the name and address of the supplier or producer.

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

25 7. California Code of Regulations, title 16, section 1770, states:

26 "For the purpose of denial, suspension, or revocation of a personal or facility license  
27 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
28 crime or act shall be considered substantially related to the qualifications, functions or duties of a

1 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a  
2 licensee or registrant to perform the functions authorized by his license or registration in a manner  
3 consistent with the public health, safety, or welfare."

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

8 9. Health and Safety Code Section 11350 (a) states:

9 "Except as otherwise provided in this division, every person who possesses (1) any  
10 controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of  
11 Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or  
12 specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section  
13 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic  
14 drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian  
15 licensed to practice in this state, shall be punished by imprisonment in the state prison.

16 10. Health and Safety Code Section 11364 states:

17 "(a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or  
18 paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in  
19 subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in  
20 paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or  
21 (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a  
22 controlled substance which is a narcotic drug classified in Schedule III, IV, or V."

23 11. Health and Safety Code Section 11377 (a) states:

24 "Except as authorized by law and as otherwise provided in subdivision (b) or Section  
25 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the  
26 Business and Professions Code, every person who possesses any controlled substance which is  
27 (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in  
28 subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d),

1 (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
2 or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
3 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to  
4 practice in this state, shall be punished by imprisonment in a county jail for a period of not more  
5 than one year or in the state prison.

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

#### 10 DRUGS INVOLVED

11 13. Vicodin (hydrocodone / acetaminophen mixture) is a controlled substance pursuant to  
12 Health and Safety Code section 11056(e)(4) and a dangerous drug pursuant to Business of  
13 Professions Code § 4022.

14 14. Methamphetamine is a schedule II controlled substance pursuant to Health and Safety  
15 Code Section 11055(d)(2) and a dangerous drug pursuant to Business of Professions Code §  
16 4022.

#### 17 FACTUAL BACKGROUND

18 15. On or about July 9, 2008, Respondent was arrested for the possession of  
19 methamphetamine, Vicodin (without a prescription), and drug paraphernalia (a methamphetamine  
20 pipe). Mountain View police found Respondent in possession of a backpack that contained  
21 Vicodin and a methamphetamine pipe. Mountain View police also searched the vehicle  
22 Respondent was a passenger in and found a bag of methamphetamine. Respondent admitted that  
23 the pipe was his and that he used methamphetamine on previous occasions. By possessing  
24 methamphetamine and Vicodin without a prescription Respondent violated Business and  
25 Professions Code § 4060 and Health and Safety Code §§ 11350 and 11377. By Possessing the  
26 methamphetamine pipe respondent violated Health and Safety Code §§ 11364.

27 16. On or about December 23, 2008, Respondent stole property from a Costco in South  
28 San Francisco, CA. Respondent brought his niece and nephew to Costco when he stole the

1 goods. Respondent stole the goods for his niece and nephew. Respondent planned to steal the  
2 goods with his niece and nephew.

3 17. On or about March 16, 2009, in San Mateo County Superior Court Case No.  
4 NM381965, Respondent was convicted of grand theft in violation of Penal Code § 487(a) and  
5 contributing to the delinquency of a minor in violation of Penal code § 272(c).

6 FIRST CAUSE FOR DISCIPLINE

7 (Unprofessional Conduct-Conviction)

8 18. Respondent is subject to disciplinary action under sections 4301(l) and 490 of the  
9 code in that Respondent was convicted of a crime that is substantially related to the duties,  
10 functions, or qualifications of a pharmacy technician. The circumstances are described in  
11 paragraphs 16-17, above.

12 SECOND CAUSE FOR DISCIPLINE

13 (Unprofessional Conduct-Moral Turpitude, Dishonesty, or Deceit)

14 19. Respondent is subject to disciplinary action under section 4301(f) of the Code in  
15 that Respondent committed moral turpitude, dishonesty, and /or deceit. The circumstances are  
16 described in paragraph 16, above.

17 THIRD CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct- Drug Use)

19 20. Respondent is subject to disciplinary action under section 4301(h) of the Code in that  
20 Respondent used controlled substances / dangerous drugs. The circumstances are described in  
21 Paragraph 15, above.

22 FOURTH CAUSE FOR DISCIPLINE

23 (Unprofessional Conduct-Violation of Drug Laws)

24 21. Respondent is subject to disciplinary action under section 4301(j) in that respondent  
25 violated statutes of California that regulate controlled substances and dangerous drugs. The  
26 circumstances are described in paragraph 15, above.

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28 ///

PRAYER

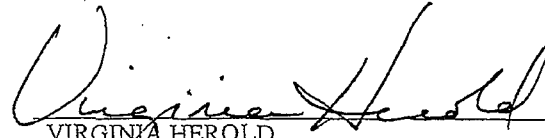
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 63325, issued to Roger Anthony Chavez.

2. Ordering Roger Anthony Chavez 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;

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

DATED: 6/17/10



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

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Hayward, California

Pharmacy Technician License  
No. TCH 63325,

Respondent.

Case No. 3540

OAH No. 2010070632

DECISION

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

This Decision shall become effective on \_\_\_\_\_.

IT IS SO ORDERED \_\_\_\_\_

\_\_\_\_\_