

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

In the Matter of the Accusation and Statement of  
Issues Against:

Case No. 3611 and 3922

**MARIA GUADALUPE MAGANA**

11 N. Delaware Street  
San Mateo, CA 94401

Pharmacy Technician License No. TCH 23065  
Intern Pharmacist License No. INT 18877  
Applicant for Registered Pharmacist License

Respondent.

**DECISION AND ORDER**

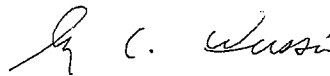
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 15, 2011.

It is so ORDERED on March 16, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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

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

10 In the Matter of the Accusation Against:

Case No. 3611

11 **MARIA GUADALUPE MAGANA**  
12 **11 N. Delaware Street**  
13 **San Mateo, CA 94401**

14 **Pharmacy Technician License No. TCH 23065**  
**Intern Pharmacist License No. INT 18877**

15 Respondent.

16 **AND**

17  
18 In the Matter of the Statement of Issues Against:

Case No. 3922

19 **MARIA GUADALUPE MAGANA**  
20 **11 N. Delaware Street**  
**San Mateo, CA 94401**

21 **Applicant for Registered Pharmacist License**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

22 Respondent.

23  
24 In the interest of a prompt and speedy settlement of this matter, consistent with the public  
25 interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs,  
26 the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will  
27 be submitted to the Board for approval and adoption as the final disposition of **both** Accusation  
28 Case No. 3611 and Statement of Issues Case No. 3922, now pending before the Board.

1 PARTIES

2 1. Virginia Herold (Complainant), Executive Officer of the Board of Pharmacy, brought  
3 this action solely in her official capacity and is represented in this matter by Kamala D. Harris,  
4 Attorney General of the State of California, by Joshua A. Room, Deputy Attorney General.

5 2. Maria Guadalupe Magana (Respondent) is representing herself in this proceeding and  
6 has chosen not to exercise her right to be represented by counsel.

7  
8 LICENSES AND APPLICATIONS

9 3. On or about July 2, 1997, the Board of Pharmacy issued Pharmacy Technician  
10 License No. TCH 23065 to Maria Guadalupe Magana (Respondent). The Pharmacy Technician  
11 License was in full force and effect at all times relevant to the charges brought herein and will  
12 expire on December 31, 2012, unless renewed.

13 4. On or about February 2, 2006, the Board of Pharmacy issued Intern Pharmacist  
14 License No. INT 18877 to Maria Guadalupe Magana (Respondent). The Intern Pharmacist  
15 License was in full force and effect at all times relevant to the charges brought herein and will  
16 expire on February 28, 2011. It is not eligible for renewal.

17 5. On or about July 21, 2010, the Board of Pharmacy, Department of Consumer Affairs  
18 received an Application for Pharmacist Licensure and Examination from Maria Guadalupe  
19 Magana (Respondent). On or about July 13, 2010, Respondent certified under penalty of perjury  
20 as to the truthfulness of all statements, answers, and representations in the application. The Board  
21 denied the application on or about October 18, 2010.

22  
23 JURISDICTION

24 6. Accusation No. 3611 was filed before the Board of Pharmacy (Board), Department of  
25 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other  
26 statutorily required documents were properly served on Respondent on October 1, 2010.  
27 Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation  
28 No. 3611 is attached as exhibit A and incorporated herein by reference.



CONDITIONS FOR AGREEMENT

1  
2       13. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
3 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
4 communicate directly with the Board regarding this stipulation and settlement, without notice to  
5 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
6 that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the  
7 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
8 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
9 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
10 not be disqualified from further action by having considered this matter.

11       14. The parties understand and agree that facsimile copies of this stipulation, including  
12 facsimile signatures thereto, shall have the same force and effect as the originals.

13       15. The parties understand and agree that pursuant to Business and Professions Code  
14 section 4202, subdivision (e), should Respondent achieve licensure as a pharmacist, Respondent's  
15 Pharmacy Technician License No. TCH 23065 will be rendered immediately invalid, and will be  
16 canceled. Respondent must return all indicia of licensure to the Board within fifteen (15) days.

17       16. The parties understand and agree that Respondent's Intern Pharmacist License No.  
18 INT 18877 will expire on February 28, 2011, and is not eligible for renewal or extension pursuant  
19 to Business and Professions Code section 4208. On or about February 28, 2011, the License will  
20 be canceled. Respondent must return all indicia of licensure to the Board within fifteen (15) days.

21       17. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
26 writing executed by an authorized representative of each of the parties.

27       18. In consideration of the foregoing, the parties agree that the Board may, without  
28 further notice or formal proceeding, issue and enter the following Disciplinary Order:

1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements  
3 for issuance thereof, a Registered Pharmacist License shall be issued to Maria Guadalupe Magana  
4 (Respondent) and immediately revoked. Revocation is stayed and the Pharmacist License is  
5 placed on probation for five (5) years on the terms and conditions detailed below.

6 IT IS FURTHER HEREBY ORDERED that this order shall apply to Pharmacy Technician  
7 License No. TCH 23065 and/or to Intern Pharmacist License No. INT 18877, issued to Maria  
8 Guadalupe Magana (Respondent), for as long as either or both remains in effect. Accordingly, if  
9 on the effective date of this decision one or both of these licenses remains effective (i.e., has not  
10 been canceled or made invalid by operation of law), any license that is still effective is revoked.  
11 The revocation(s) is/are stayed and the license(s) is/are placed on probation for five (5) years on  
12 the terms and conditions detailed below. If either license is subsequently renewed, restored, or  
13 reissued, it shall be subject to any remaining period of probation with all terms and conditions.

14 **1. Obey All Laws**

15 Respondent shall obey all state and federal laws and regulations.

16 Respondent shall report any of the following occurrences to the board, in writing, within  
17 seventy-two (72) hours of such occurrence:

- 18 • an arrest or issuance of a criminal complaint for violation of any provision of the  
19 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
20 substances laws
- 21 • a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
22 criminal complaint, information or indictment
- 23 • a conviction of any crime
- 24 • discipline, citation, or other administrative action filed by any state or federal agency  
25 which involves respondent's license(s) or which is related to the practice of pharmacy  
26 or the manufacturing, obtaining, handling, distributing, billing, or charging for any  
27 drug, device or controlled substance.

28 Failure to timely report such occurrence shall be considered a violation of probation.

1           **2. Report to the Board**

2           Respondent shall report to the board quarterly, on a schedule as directed by the board or its  
3           designee. The report shall be made either in person or in writing, as directed. Among other  
4           requirements, respondent shall state in each report under penalty of perjury whether there has  
5           been compliance with all the terms and conditions of probation. Failure to submit timely reports  
6           in a form as directed shall be considered a violation of probation. Any period(s) of delinquency  
7           in submission of reports as directed may be added to the total period of probation. Moreover, if  
8           the final probation report is not made as directed, probation shall be automatically extended until  
9           such time as the final report is made and accepted by the board.

10           **3. Interview with the Board**

11           Upon receipt of reasonable prior notice, respondent shall appear in person for interviews  
12           with the board or its designee, at such intervals and locations as are determined by the board or its  
13           designee. Failure to appear for any scheduled interview without prior notification to board staff,  
14           or failure to appear for two (2) or more scheduled interviews with the board or its designee during  
15           the period of probation, shall be considered a violation of probation.

16           **4. Cooperate with Board Staff**

17           Respondent shall cooperate with the board's inspection program and with the board's  
18           monitoring and investigation of respondent's compliance with the terms and conditions of her  
19           probation. Failure to cooperate shall be considered a violation of probation.

20           **5. Continuing Education**

21           Respondent shall provide evidence of efforts to maintain skill and knowledge as a licensee  
22           as directed by the board or its designee.

23           **6. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as  
24           Designated Representative-in-Charge, or Serving as a Consultant**

25           During the period of probation, respondent shall not supervise any intern pharmacist, be the  
26           pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board,  
27           nor serve as a consultant, unless otherwise specified in this order. Assumption of any such  
28           unauthorized supervision responsibilities shall be considered a violation of probation.

1           7.    **Notice to Employers**

2           During the period of probation, respondent shall notify all present and prospective  
3 employers of the decision in case numbers 3611 and 3922 and the terms, conditions and  
4 restrictions imposed on respondent by the decision, as follows:

5           Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
6 respondent undertaking any new employment, respondent shall cause her direct supervisor,  
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
9 individual(s) has/have read the decision in case numbers 3611 and 3922, and terms and conditions  
10 imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or  
11 supervisor(s) submit timely acknowledgment(s) to the board.

12           If respondent works for or is employed by or through a pharmacy employment service,  
13 respondent must notify her direct supervisor, pharmacist-in-charge, and owner at every entity  
14 licensed by the board of the terms and conditions of the decision in case numbers 3611 and 3922  
15 in advance of the respondent commencing work at each licensed entity. A record of this  
16 notification must be provided to the board upon request.

17           Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
18 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
19 service, respondent shall cause her direct supervisor with the pharmacy employment service to  
20 report to the board in writing acknowledging that she has read the decision in case numbers 3611  
21 and 3922 and the terms and conditions imposed thereby. It shall be respondent's responsibility to  
22 ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

23           Failure to timely notify present or prospective employer(s) or to cause such employer(s) to  
24 submit timely acknowledgments to the board shall be considered a violation of probation.

25           "Employment" within the meaning of this provision shall include any full-time,  
26 part-time, temporary, relief or pharmacy management service as a pharmacist, intern  
27 pharmacist, or pharmacy technician, or any position for which licensure in any of  
these categories is a requirement or criterion for employment, whether the respondent  
is an employee, independent contractor or volunteer.

28           ///



1           **8. Notification of Change in Employment, Name, Address(es), or Phone(s)**

2           Respondent shall notify the board in writing within ten (10) days of any change of  
3 employment. Said notification shall include the reasons for leaving, the address of the new  
4 employer, the name of the supervisor and owner, and the work schedule if known. Respondent  
5 shall further notify the board in writing within ten (10) days of a change in name, residence  
6 address, mailing address, or phone number.

7           Failure to timely notify the board of any change in employer(s), name(s), address(es), or  
8 phone number(s) shall be considered a violation of probation.

9           **9. No Ownership of Licensed Premises**

10          Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
11 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
12 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
13 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
14 days following the effective date of this decision and shall immediately thereafter provide written  
15 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
16 documentation thereof shall be considered a violation of probation.

17          **10. Tolling of Probation**

18          Except during periods of suspension, respondent shall, at all times while on probation, be  
19 employed as a pharmacist in California for a minimum of forty (40) hours per calendar month.  
20 Any month during which this minimum is not met shall toll the period of probation, i.e., the  
21 period of probation shall be extended by one month for each month during which this minimum is  
22 not met. During any such period of tolling of probation, respondent must nonetheless comply  
23 with all terms and conditions of probation.

24          Should respondent, regardless of residency, for any reason (including vacation) cease  
25 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,  
26 respondent must notify the board in writing within ten (10) days of the cessation of practice, and  
27 must further notify the board in writing within ten (10) days of the resumption of practice. Any  
28 failure to provide such notification(s) shall be considered a violation of probation.

1 It is a violation of probation for respondent's probation to remain tolled pursuant to the  
2 provisions of this condition for a total period, counting consecutive and non-consecutive months,  
3 exceeding thirty-six (36) months.

4 "Cessation of practice" means any calendar month during which respondent is  
5 not practicing as a pharmacist as defined by Business and Professions Code section  
6 4000 et seq. for at least forty (40) hours. "Resumption of practice" means any  
7 calendar month during which respondent is practicing as a pharmacist as defined by  
8 Business and Professions Code section 4000 et seq. for at least forty (40) hours.<sup>1</sup>

#### 9 11. Status of License

10 Respondent shall, at all times while on probation, maintain an active, current pharmacist  
11 license with the board, including any period during which probation is tolled. Failure to maintain  
12 an active, current pharmacist license shall be considered a violation of probation.

13 If respondent's pharmacist license expires or is cancelled by operation of law or otherwise  
14 at any time during the period of probation, including any extensions thereof due to tolling or  
15 otherwise, upon renewal or reapplication respondent's pharmacist license shall be subject to all  
16 terms and conditions of this probation not previously satisfied.<sup>2</sup>

#### 17 12. Reimbursement of Board Costs

18 As a condition precedent to successful completion of probation, respondent shall pay to the  
19 board its costs of investigation and prosecution in the amount of \$2,667.50. Respondent shall be  
20 permitted to pay these costs in a payment plan approved by the board or its designee, so long as  
21 payment is completed no later than four (4) years after the effective date of this decision. There  
22 shall be no deviation from this schedule absent prior written approval by the board or its designee.  
23 Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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24 <sup>1</sup> If respondent holds a pharmacist license, this hours requirement shall apply solely to the  
25 pharmacist license. If respondent holds a pharmacy technician license and no pharmacist license,  
26 this hours requirement shall apply instead to the pharmacy technician license, and everywhere in  
27 this term that "pharmacist" appears shall be substituted the words "pharmacy technician." In the  
28 event a pharmacist license is later acquired, this requirement shall apply to that license instead.

<sup>2</sup> If respondent holds a pharmacist license, this status requirement shall apply solely to the  
pharmacist license. If respondent holds a pharmacy technician license and no pharmacist license,  
this status requirement shall apply instead to the pharmacy technician license, and everywhere in  
this term that "pharmacist" appears shall be substituted the words "pharmacy technician." In the  
event a pharmacist license is later acquired, this requirement shall apply to that license instead.

1 The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to  
2 reimburse the board its costs of investigation and prosecution.

3 **13. Probation Monitoring Costs**

4 Respondent shall pay any costs associated with probation monitoring as determined by the  
5 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
6 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
7 be considered a violation of probation.

8 **14. Pharmacists Recovery Program (PRP)<sup>3</sup>**

9 Within thirty (30) days of the effective date of this decision, respondent shall contact the  
10 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,  
11 successfully participate in, and complete the treatment contract and any subsequent addendums as  
12 recommended and provided by the PRP and as approved by the board or its designee. The costs  
13 for PRP participation shall be borne by the respondent.

14 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of  
15 the effective date of this decision is no longer considered a self-referral under Business and  
16 Professions Code section 4362(a)(2). Respondent shall successfully participate in and complete  
17 her current contract and any subsequent addendums with the PRP.

18 Failure to timely contact or enroll in the PRP, or successfully participate in and complete  
19 the treatment contract and/or any addendums, shall be considered a violation of probation.

20 <sup>3</sup> Pharmacy technicians are not eligible for entry into the Pharmacists Recovery Program.  
21 Respondent shall be required to comply with this term if at any time during probation she holds or  
22 acquires either or both a pharmacist or an intern pharmacist license. If she holds only a pharmacy  
23 technician license, the following term shall be substituted for this term in the agreement:

23 **12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

24 Within thirty (30) days of the effective date of this decision, respondent shall begin  
25 regular attendance at a recognized substance abuse recovery support group in California,  
26 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) that has been approved by the  
27 board or its designee. Respondent must attend at least one group meeting per week unless  
28 otherwise directed by the board or its designee. Respondent shall continue regular  
attendance and submit signed and dated documentation confirming attendance with each  
quarterly report for the duration of probation. Failure to attend or submit documentation  
thereof shall be considered a violation of probation.

If respondent acquires a pharmacist or intern pharmacist license, the PRP term shall be reinstated.

1 Probation shall be automatically extended until respondent successfully completes the PRP.  
2 Any person terminated from the PRP program shall be automatically suspended by the board.  
3 Respondent may not resume the practice of pharmacy until notified by the board in writing.

4 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
5 licensed practitioner as part of a documented medical treatment shall result in the automatic  
6 suspension of practice by respondent and shall be considered a violation of probation.

7 Respondent may not resume the practice of pharmacy until notified by the board in writing.

8 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
9 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
10 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
11 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
12 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
13 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
14 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
15 drugs and controlled substances. Respondent shall not engage in any activity that requires the  
16 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
17 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
18 designated representative for any entity licensed by the board.

19 Failure to comply with any such suspension shall be considered a violation of probation.

20 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not  
21 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid  
22 administrative fees not submitted to the PRP as part of the annual probation monitoring costs.

23 **15. Prescription Coordination and Monitoring of Prescription Use**

24 Within thirty (30) days of the effective date of this decision, respondent shall submit to the  
25 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,  
26 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's  
27 history with the use of alcohol and who will coordinate and monitor any prescriptions for  
28 respondent for dangerous drugs, controlled substances or mood-altering drugs.

1 The approved practitioner shall be provided with a copy of the board's Accusation,  
2 Statement of Issues, and decision. A record of this notification must be provided to the board  
3 upon request. Respondent shall sign a release authorizing the practitioner to communicate with  
4 the board about respondent's treatment(s). The coordinating physician, nurse practitioner,  
5 physician assistant, or psychiatrist shall report to the board on a quarterly basis for the duration of  
6 probation regarding respondent's compliance with this condition. If any substances considered  
7 addictive have been prescribed, the report shall identify a program for the time limited use of any  
8 such substances. The board may require that the single coordinating physician, nurse practitioner,  
9 physician assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in  
10 addictive medicine. Should respondent, for any reason, cease supervision by the approved  
11 practitioner, respondent shall notify the board immediately and, within thirty (30) days of ceasing,  
12 submit the name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist  
13 of respondent's choice to the board or its designee for its prior approval. Failure to timely submit  
14 the selected practitioner or replacement practitioner to the board for approval, or to ensure the  
15 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

16 If at any time an approved practitioner determines that respondent is unable to practice  
17 safely or independently as a pharmacist, the practitioner shall notify the board immediately by  
18 telephone and follow up by written letter within three (3) working days. Upon notification from  
19 the board or its designee of this determination, respondent shall be automatically suspended and  
20 shall not resume practice until notified by the board that practice may be resumed.

21 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
22 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
23 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
24 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
25 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
26 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
27 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
28 drugs and controlled substances. Respondent shall not engage in any activity that requires the

1 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
2 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
3 designated representative for any entity licensed by the board.

4 Failure to comply with any such suspension shall be considered a violation of probation.

5 **16. Abstain from Drugs and Alcohol Use**

6 Respondent shall completely abstain from the possession or use of alcohol, controlled  
7 substances, dangerous drugs or their paraphernalia except when the drugs are lawfully prescribed  
8 by a licensed practitioner as part of a documented medical treatment. Upon request of the board  
9 or its designee, respondent shall provide documentation from the licensed practitioner that the  
10 prescription for the drug was legitimately issued as a necessary part of treatment of respondent.

11 Failure to timely provide such documentation shall be considered a violation of probation.

12 Respondent shall ensure she is not in the same physical location as individuals using illicit  
13 substances even if respondent is not using the drugs. Any possession or use of alcohol, controlled  
14 substances, or their associated paraphernalia not supported by documentation timely provided, or  
15 any proximity to persons using illicit substances, shall be considered a violation of probation.

16 **17. Random Drug Screening**

17 Respondent, at her own expense, shall submit to random testing, including but not limited  
18 to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening  
19 program as directed by the board or its designee. Respondent may be required to participate in  
20 testing for the entire probation period and frequency of testing will be determined by the board or  
21 its designee. At all times, respondent shall fully cooperate with the board or its designee, and  
22 shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics,  
23 hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct.  
24 Failure to timely submit to testing as directed shall be considered a violation of probation.

25 Upon request of the board or its designee, respondent shall provide documentation from a  
26 licensed practitioner that the prescription for a detected drug was legitimately issued and is a  
27 necessary part of the treatment of the respondent. Failure to timely provide such documentation  
28 shall be considered a violation of probation.

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a  
2 licensed practitioner as part of a documented medical treatment shall be considered a violation of  
3 probation and shall result in the automatic suspension of practice of pharmacy by respondent.  
4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

5 During any such suspension, respondent shall not enter any pharmacy area or any portion of  
6 the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor  
7 of drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and  
8 devices or controlled substances are maintained. Respondent shall not practice pharmacy nor do  
9 any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or  
10 patient consultation; nor shall respondent manage, administer, or be a consultant to any licensee  
11 of the board, or have access to or control the ordering, manufacturing or dispensing of dangerous  
12 drugs and controlled substances. Respondent shall not engage in any activity that requires the  
13 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the  
14 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a  
15 designated representative for any entity licensed by the board.

16 Failure to comply with any such suspension shall be considered a violation of probation.

17 **18. License Surrender While on Probation/Suspension**

18 Following the effective date of this decision, should respondent cease practice as a  
19 pharmacist due to retirement or health, or be otherwise unable to satisfy the terms and conditions  
20 of probation, respondent may tender her pharmacist license to the board for surrender. The board  
21 or its designee shall have the discretion whether to grant the request for surrender or take any  
22 other action it deems appropriate. Upon formal acceptance of the surrender, respondent will no  
23 longer be subject to the terms and conditions of probation. This surrender constitutes a record of  
24 discipline and shall become a part of the respondent's license history with the board.<sup>4</sup>

25 <sup>4</sup> If respondent holds a pharmacist license, this allowance shall apply to the pharmacist  
26 license. If respondent holds a pharmacy technician license and no pharmacist license, it shall  
27 apply instead to the pharmacy technician license, and everywhere in this term that "pharmacist"  
28 appears shall be substituted the words "pharmacy technician." In the event a pharmacist license  
is later acquired, this allowance shall apply to that license instead. In any event, following such  
surrender respondent may not apply for any license from the board for three (3) years.

1           Upon acceptance of the surrender, respondent shall relinquish her pocket and wall license to  
2 the board within ten (10) days of notification by the board surrender is accepted. Respondent  
3 may not reapply for any license from the board for three (3) years from the effective date of the  
4 surrender. Respondent shall meet all requirements applicable to the license sought as of the date  
5 the application for that license is submitted to the board, including any outstanding costs.

6           **19. Violation of Probation**

7           If respondent has not complied with any term or condition of probation, the board shall  
8 have continuing jurisdiction over respondent, and probation shall automatically be extended, until  
9 all terms and conditions have been satisfied or the board has taken other action as deemed  
10 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and  
11 to impose the penalty that was stayed.

12           If respondent violates probation in any respect, the board, after giving respondent notice  
13 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
14 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
15 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
16 a petition to revoke probation or an accusation is filed against respondent during probation, the  
17 board shall have continuing jurisdiction and the period of probation shall be automatically  
18 extended until the petition to revoke probation or accusation is heard and decided.

19           **20. Completion of Probation**

20           Upon written notice by the board or its designee indicating successful completion of  
21 probation, respondent's license will be fully restored.

22           ///

23           ///

24           ///

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27           ///

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**Exhibit A**

**Accusation No. 3611**

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1 EDMUND G. BROWN JR.  
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2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
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6 Facsimile: (415) 703-5480  
*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:

Case No. 3611

11 **MARIA GUADALUPE MAGANA**  
12 **11 N. Delaware Street**  
13 **San Mateo, CA 94401**

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

14 **Pharmacy Technician License No. TCH 23065**  
15 **Intern Pharmacist License No. INT 18877**

Respondent.

16 Complainant alleges:

17 PARTIES

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

20 2. On or about July 2, 1997, the Board of Pharmacy issued Pharmacy Technician  
21 License No. TCH 23065 to Maria Guadalupe Magana (Respondent). The Pharmacy Technician  
22 License was in full force and effect at all times relevant to the charges brought herein and will  
23 expire on December 31, 2010, unless renewed.

24 3. On or about February 2, 2006, the Board of Pharmacy issued Intern Pharmacist  
25 License No. INT 18877 to Maria Guadalupe Magana (Respondent). The Intern Pharmacist  
26 License was in full force and effect at all times relevant to the charges brought herein and will  
27 expire on February 28, 2011, unless renewed.

28 ///



1 (l) The conviction of a crime substantially related to the qualifications, functions, and duties  
2 of a licensee under this chapter.

3 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
4 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
5 to the qualifications, functions or duties of the license.

6 10. California Code of Regulations, title 16, section 1770, states:

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

13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
14 administrative law judge to direct a licentiate found to have committed a violation of the licensing  
15 act to pay a sum not to exceed its reasonable costs of investigation and enforcement.

#### 16 FIRST CAUSE FOR DISCIPLINE

#### 17 (Conviction of Substantially Related Crime(s))

18 12. Respondent is subject to discipline under section 4301(l) and/or section 490 of the  
19 Code, by reference to California Code of Regulations, title 16, section 1770, for the conviction of  
20 substantially related crime(s), in that on or about October 3, 2008, in the criminal case *People v.*  
21 *Maria Guadalupe Magana*, Case No. NM378488 in San Mateo County Superior Court,  
22 Respondent was convicted of violating Vehicle Code section 23152(b) (Driving with blood  
23 alcohol level of 0.08% or more), a misdemeanor, with a special allegation pursuant to Vehicle  
24 Code section 23578 for having a blood alcohol level of 0.15% or more, as follows:

25 a. On or about July 20, 2008, Respondent was observed to have significant signs  
26 of intoxication while driving an automobile, including that: she passed out behind the wheel; she  
27 was unable to effectively operate the vehicle; she lacked coordination and was groggy; and she  
28 smelled of alcohol. She was detained and arrested by Daly City (CA) Police.



1           3.     Ordering Respondent to pay the Board the reasonable costs of the investigation and  
2 enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

4  
5  
6 DATED:

9/23/10

Virginia Herold

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

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**Exhibit B**

**Statement of Issues No. 3922**

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1 EDMUND G. BROWN JR.  
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2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 JOSHUA A. ROOM  
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4 State Bar No. 214663  
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5 San Francisco, CA 94102-7004  
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6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

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

10 In the Matter of the Statement of Issues Against:  
11 **MARIA GUADALUPE MAGANA**  
12 **11 N. Delaware Street**  
13 **San Mateo, CA 94401**  
14 **Applicant for Registered Pharmacist License**  
15 **Respondent.**

Case No. 3922.

**STATEMENT OF ISSUES**

16 Complainant alleges:

17 PARTIES

- 18 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official  
19 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
20 2. On or about July 21, 2010, the Board of Pharmacy, Department of Consumer Affairs  
21 received an Application for Pharmacist Licensure and Examination from Maria Guadalupe  
22 Magana (Respondent). On or about July 13, 2010, Respondent certified under penalty of perjury  
23 as to the truthfulness of all statements, answers, and representations in the application. The Board  
24 denied the application on or about October 18, 2010.

25 JURISDICTION

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





1 c. On or about October 3, 2008, Respondent pleaded nolo contendere and was  
2 convicted of the second count in the Complaint, violation of Vehicle Code section 23152(b)  
3 (Driving with blood alcohol of 0.08% or more), a misdemeanor, and also admitted to the special  
4 allegation pursuant to Vehicle Code section 23578 of having a blood alcohol level of 0.15% or  
5 more. She was sentenced to thirty (30) days in county jail, as well as fines and fees.

6  
7 SECOND CAUSE FOR DENIAL OF APPLICATION

8 (Dangerous or Injurious Use of Alcohol)

9 9. Respondent's application is subject to denial under the following section(s) of the  
10 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as  
11 described in paragraph 8 above, Respondent made dangerous or injurious use of alcohol.

12  
13 THIRD CAUSE FOR DENIAL OF APPLICATION

14 (Unprofessional Conduct)

15 10. Respondent's application is subject to denial under the following section(s) of the  
16 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described  
17 in paragraph 8 above, Respondent engaged in unprofessional conduct.

18  
19 OTHER FACTS RELEVANT TO APPLICATION

20 11. As additional facts relevant to the application for licensure by Respondent Magana,  
21 Complainant alleges that on or about November 18, 1994, in the criminal case *People v. Maria*  
22 *Guadalupe Magana*, Case No. 01542941 in San Francisco County Superior Court, Respondent  
23 was convicted of a substantially related crime, namely violating Vehicle Code section 23152(a)  
24 (Driving while under the influence of alcohol), a misdemeanor.

25  
26 PRAYER

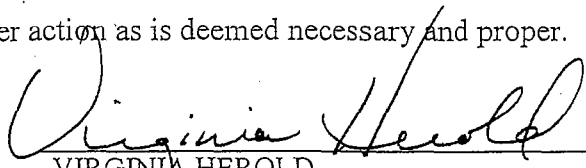
27 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
28 and that following the hearing, the Board of Pharmacy issue a decision:

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1. Denying the application of Maria Guadalupe Magana (Respondent) for licensure and examination as a Registered Pharmacist;

2. Taking such other and further action as is deemed necessary and proper.

DATED: 12/17/10



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

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