

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

In the Matter of the Accusation Against:

**DANIEL MOISES SANCHEZ  
3915 S Wilton Pl.  
Los Angeles, CA 90062**

**Pharmacy Technician License No.  
TCH 48039**

Respondent.

Case No. 3791

OAH No.: 2011040207

**DECISION AND ORDER**

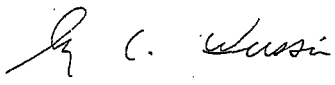
The attached Proposed Decision and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on June 7, 2012.

It is so ORDERED on May 8, 2012.

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:

DANIEL MOISES SANCHEZ,  
Pharmacy Technician Registration  
No. TCH-48039,

Respondent.

Case No. 3791

OAH No. 2011040207

**PROPOSED DECISION**

On February 15, 2012, Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, heard this matter at San Luis Obispo. Complainant was represented by Michael Brown, Deputy Attorney General. Respondent Daniel Moises Sanchez was present and represented himself.

The hearing was scheduled to be recorded by a tape recorder. However, at the start of hearing, the Administrative Law Judge was unable to record the hearing due to a malfunctioning of the audio recording system. Thereupon, the parties agreed that the hearing would proceed and that, in lieu of an audio recording, a Statement of the Evidence would be prepared and constitute the record of the hearing.

At the conclusion of the hearing, complainant's counsel presented an opinion of the Court of Appeal, which is hereby marked as Exhibit 14. At respondent's request, the record was held open until March 9, 2012, to allow him to file a response to the court case. In addition, complainant's counsel was directed to prepare and submit a draft summary of the evidence.

On March 5, 2012, complainant's counsel submitted a Summary of the Evidence, which was marked as Exhibit 15. On March 9, 2012, respondent filed a response, which was marked as Exhibit B. Both Exhibit 15 and B are hereby admitted into evidence.

Oral and documentary evidence having been received, the Administrative Law Judge submitted this matter for decision on March 9, 2012, and finds as follows:

## FACTUAL FINDINGS

1. The Administrative Law Judge takes official notice that, on February 23, 2011, the Accusation, Case No. 3791, was made and filed by complainant Virginia Herold in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (Board).

2. On or about August 15, 2003, the Board issued pharmacy technician registration number TCH-48039 to Daniel Moises Sanchez (respondent). Said registration expires on December 31, 2012, unless renewed.

3. On July 21, 2011, the Board suspended respondent's registration pursuant to either Business and Professions Code section 4311, subdivision (a), due to respondent's incarceration after he was convicted of a felony, or Business and Professions Code section 4311, subdivision (c), due to respondent having suffered a felony conviction which is substantially related to the qualifications, functions, or duties of a Board licensee, as set forth in Findings 4 and 6 below. It was not established whether respondent requested a hearing to contest the suspension of his registration under Business and Professions Code section 4311.

### Respondent's Conviction

4. (A) On March 9, 2010, before the Superior Court of California, County of Los Angeles, in *People v. Daniel Moises Sanchez*, Case No. BA354354, respondent was found guilty by a verdict of a jury of assault with a firearm in violation of Penal Code section 245, subdivision (a)(2), a felony, and assault with a deadly weapon, a bat, in violation of Penal Code section 245, subdivision (a)(1), a felony. Respondent was remanded into custody.

(B) On May 5, 2010, respondent appeared in court for a probation and sentencing hearing. As a result of the jury verdict on the one count of the criminal complaint, the Superior Court adjudged respondent convicted of assault with a firearm, denied probation, and ordered, in part, that he serve five years in state prison with credit for having already served 826 days in custody, pay court security and criminal conviction assessments totaling \$60, pay a restitution fine of \$200, and make restitution to the victim in an amount to be determined in a restitution hearing. As a result of the jury verdict on the other count of the criminal complaint, the Superior Court adjudged respondent convicted of assault with a deadly weapon, denied him probation, and ordered that he serve an additional year in state prison and pay court security and criminal conviction assessments totaling \$60.

(C) On June 21, 2010, the Superior Court held a restitution hearing. Respondent was incarcerated at the time of the hearing but appeared personally and was represented by his private counsel. The victim did not appear for the hearing.

The restitution hearing was taken off calendar without prejudice and no restitution order was made. The proceedings were then terminated.

5. (A) According to the arrest reports of the Los Angeles Police Department and respondent's testimony, the facts and circumstances surrounding the commission of respondent's crimes were that, in the early morning hours on March 20, 2009, respondent drove a Chevrolet Tahoe sports utility vehicle (SUV) into a gas station located near the intersection of Western Avenue and Exposition Boulevard in Los Angeles. He pumped gasoline into his vehicle and went inside the gas station to pay for the purchase. When he returned to his vehicle, respondent saw a man (also the victim) rummaging through the interior of his vehicle. Respondent confronted him. The man fled. Respondent grabbed an aluminum baseball bat from his vehicle and chased after the man with the bat in hand. Respondent, however, fell to the ground and went back to his vehicle.

(B) Thereupon, a Hispanic man, whom respondent did not know, approached and stated that he had seen the man before in the area. The unknown Hispanic man offered to help respondent to find him and beat him up. Respondent agreed because he was still angry about the man entering his vehicle. Respondent allowed the unknown Hispanic man into his vehicle and drove around the area of the gas station until they spotted the victim. He pulled up his vehicle next to the victim. The unknown Hispanic man then pulled out a gun and fired several rounds at the victim. Respondent testified he did not know that the unknown Hispanic man had a handgun. Respondent drove away, let the unknown Hispanic man out from his vehicle in another area of town, and went home.

(C) Later that morning, the victim reported to the Los Angeles Police Department that he had been the object of a shooting. Someone had taken a photograph of respondent's SUV while he was driving away from the scene of the shooting. The photograph was forwarded to the police. Using the license plate number of the vehicle in the photograph, the police determined that the SUV was registered to respondent's sister and that respondent had been issued several traffic citations while driving the vehicle. Respondent and his sister lived at the same address. The police set up surveillance outside of respondent's home and obtained a search warrant. In the afternoon of March 20, 2009, respondent was observed by a plain-clothed police officer taking an aluminum baseball bat from inside the vehicle and placing it in the trunk. His sister was seen going out to shop for groceries. When she returned to the house, the sister put her purse inside her boyfriend's car.

(D) The police executed the search warrant and removed the aluminum baseball bat from the back of the SUV and seized the purse belonging to his sister. Inside the purse, the police found a .25 caliber semi-automatic handgun. Respondent's sister told the police that, approximately three weeks earlier, she had taken the handgun from respondent's dresser and had hid it from him. Respondent

was arrested for attempted murder. His sister was arrested for carrying a concealed firearm.

(E) Based on elements of the crimes for which he was convicted, the facts and circumstances of respondent's crimes were that, on or about March 20, 2009, he assaulted the victim with a firearm and with a bat. It was not established, however, that the handgun seized by the police from respondent's sister was used or fired in the assault upon the victim.

6. Respondent was held in custody from the date of his arrest and through his criminal trial and sentencing. After he was sentenced to serve six years in state prison, respondent was eventually placed at the California Men's Colony, a state correctional institution in San Luis Obispo. Due to credits for time served and good time work time, respondent is scheduled to be released from state prison on parole on March 3, 2012, after serving three years in custody and in prison. While imprisoned, he completed vocational training in servicing heating, ventilation, and air conditioning systems.

7. Respondent graduated from Venice High School and then attended Los Angeles City College. In or about June 2003, he completed his education and training for his pharmacy technician license at American Career College in Los Angeles. After receiving his license, respondent worked at the Veteran's Administration Hospital in Los Angeles for approximately nine months and then at a private pharmacy in Van Nuys for two years. In or about 2006, respondent was hired as a pharmacy technician at the in-patient pharmacy at the Kaiser Sunset facility in Los Angeles. He worked at Kaiser Sunset until the date of his arrest on March 20, 2009, and has not worked as a pharmacy technician since that time.

8. Respondent is 28 years old. He hopes to retain his registration and to work as a pharmacy technician once he is paroled from prison in early March 2012. At the hearing in this matter, respondent admitted his felony conviction but contended that, while he was convicted of violent crimes, he did not shoot the victim or beat him. He pointed out that his crimes did not involve drugs, patients, his work at the pharmacy, or his duties as a pharmacy technician.

#### Matters Alleged as Disciplinary Considerations

9. (A) It was not established that, on or about May 17, 2007, respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself in violation of Business and Professions Code section 4301, subdivision (f), by soliciting sexual acts from an undercover police officer. The only evidence presented by complainant on this cause for discipline was the arrest report and respondent denied that he committed this offense.

(B) On May 7, 2007, respondent was arrested by the Los Angeles Police Department for allegedly soliciting an undercover police officer for an act or acts of prostitution, a misdemeanor. However, respondent was not charged in a criminal complaint for this alleged violation and was not convicted of any crime. In the hearing in this matter, respondent did not admit having solicited an act or acts of prostitution and testified that he was entrapped by the undercover police officer.

(C) It was not established by the arrest report (Exh. 9) that, on or about May 7, 2007, respondent solicited an undercover police officer for an act of solicitation or violated Penal Code section 647, subdivision (b). While working undercover on Sunset Boulevard, the police officer engaged respondent in a conversation and suggested a price for sexual acts. Nor was it established by the arrest report that, on or about May 7, 2007, respondent committed any dishonest act, fraud, or deceit with intent to substantially benefit himself.

10. On or about June 3, 2005, before the Superior Court of California, County of Los Angeles, in *People v. Daniel Moises Sanchez*, Case No. 4WL11499, respondent was convicted on his plea of nolo contendere of driving without a valid driver's license in violation of Vehicle Code section 12500, subdivision (a), a misdemeanor and crime not involving moral turpitude. As a result of this conviction, respondent was placed on summary probation for 12 months, ordered not to drive without a valid driver's license and insurance, and directed to pay fines and fees totaling \$726 or perform 71 hours of community service in lieu of paying the fines and fees. Respondent paid the fines and fees and the proceedings were terminated after one year. Respondent admitted that he was convicted of this offense.

11. (A) On or about July 15, 2002, before the Superior Court of California, County of Los Angeles, in *People v. Daniel Moises Sanchez*, DR No. 02-0317438, respondent was convicted on his plea of nolo contendere of taking a vehicle without the owner's consent in violation of Vehicle Code section 10851, subdivision (a), a misdemeanor and crime involving moral turpitude and dishonesty. Respondent's sentence for this conviction was not established by the record, for complainant presented only the arrest report. Respondent admitted having this conviction on his record.

(B) The facts and circumstances of the underlying offense were that, on May 17, 2002, respondent drove a vehicle that had been reported stolen by its owner. When he was stopped by the police, the vehicle being driven by respondent had a broken ignition and the engine was operating without a key in the ignition. Respondent was 18 years old at the time of this offense.

(C) On July 9, 2003, when respondent applied for his pharmacy technician registration, the Board conducted an investigation of his 2002 conviction for taking a vehicle without the owner's consent. Respondent disclosed this conviction on his application for the registration. After reviewing and investigating

this conviction, the Board approved respondent's application for issuance of the registration on August 8, 2003. Respondent was issued his pharmacy technician registration one week later on August 15, 2003.

12. The costs of investigation and prosecution of this matter totaled \$10,195, as set forth in the Certification of Prosecution Costs (Exh. 3).

\* \* \* \* \*

Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

### LEGAL CONCLUSIONS

1. Grounds exist to discipline respondent's license pursuant to Business and Professions Code sections 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, in that respondent has been convicted of crimes substantially related to the qualifications, functions, or duties of a registered pharmacy technician, based on Findings 4 – 5 above.

2. Grounds do not exist to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), in that it was not established that respondent committed dishonest acts, fraud, or deceit with the intent to substantially benefit himself, as set forth in Finding 9 above.

3. Grounds exist to direct respondent to pay to the Board for the reasonable costs of investigation and enforcement of this matter pursuant to Business and Professions Code Section 125.3, in that respondent violated the Pharmacy Law, based on Conclusions of Law 1 and Finding 4 – 5 and 12 above. The reasonable costs of investigation and prosecution costs in this matter are deemed to be \$3,500.

4. Discussion—Under Business and Professions Code section 4301, subdivision (l), the Board shall take action against the holder of a license who is guilty of unprofessional conduct. Unprofessional conduct includes the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under the Pharmacy Law. The record of conviction constitutes conclusive evidence only of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or, in case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a Board licensee.

California Code of Regulations, title 16, section 1770, provides in pertinent part that, for the purpose of disciplining a Board licensee, a crime or act shall be considered substantially related to the qualifications, functions, and duties of a registrant if to a substantial degree it evidences the present or potential unfitness of a registrant to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

In this matter, respondent admits his felony conviction for assault with a firearm and assault with a deadly weapon but claims that he was not convicted of any crime substantially related to the qualifications, functions, and duties of registered pharmacy technician. He asserts that he did not shoot at the victim with a firearm. Rather, he claims an unknown Hispanic man had the firearm and shot at the victim. Respondent asserts that he did not know this man or realize that he had a gun. In addition, respondent contends that his crimes did not involve drugs, patients, or his job at a pharmacy. Respondent's contentions are not persuasive.

In *Lone Star Security & Video, Inc, et al., v. Bureau of Security and Investigative Services* (2009) 176 Cal. App. 4th 1249, the Court of Appeal, Second Appellate District, upheld the decision of the Bureau of Security and Investigative Services to revoke the license of a qualified alarm manager due to his conviction for disturbing the peace under Penal Code section 415. The Court of Appeal stated that evidence of the circumstances surrounding the commission of the crime was admissible to determine whether the conviction was substantially related to the qualifications, functions, and duties of the licensee. The appellate court found that there was sufficient evidence to support the finding that the conviction for disturbing the peace was substantially related to the qualifications, functions, and duties of a qualified alarm manager inasmuch as the circumstances of the conviction showed that the licensee used deadly force and drew a weapon in violation of the pertinent licensing law.

Here, the circumstances of the crimes for which respondent was convicted were that he chased after the victim with a bat because he found him rummaging through his vehicle and became angry with him. Respondent then drove after the victim with an unknown person with the intention of finding and beating him. The situation escalated when the unknown person pulled out a gun and shot at the victim. While his crimes did not occur at his job as a registered pharmacy technician and did not involve medications or pharmacy customers, respondent's crimes of assault with a firearm and assault with a deadly weapon, a bat, were serious, and actually more serious and dangerous to the public than the conviction for disturbing the peace described in the *Lone Star Security* case. Respondent's crimes demonstrated poor judgment and a propensity for using force and violence in public to resolve disagreements or problems. Coupled with his past convictions for driving without a valid license and taking a vehicle, respondent's crimes also show that he does not have a good regard for the laws of society. His past conviction for taking a



vehicle also involved dishonesty. As a registered pharmacy technician, respondent has access to drugs and medications at a pharmacy and is expected to follow the laws and regulations governing the safekeeping and dispensing of medications and the operation of the pharmacy. Accordingly, respondent's crimes of assault with a firearm and assault with a deadly weapon demonstrate that he does not possess the necessary judgment, fitness, and temperament expected of a Board licensee and are therefore found to be substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

Under the circumstances of this matter, respondent cannot be considered rehabilitated from his conviction inasmuch as he has been incarcerated for three years following the commission of his crimes and is scheduled to be released from prison on parole. He has not had the opportunity or time to demonstrate that he is rehabilitated, but he has made a good start on his path towards rehabilitation by admitting his past convictions, completing his sentence, and completing vocational training while in prison. Due to the present lack of evidence of rehabilitation, public health and safety require the revocation of respondent's registration at this time. After the appropriate length of time leading a law-abiding life and developing evidence of his rehabilitation, respondent may consider filing a petition for reinstatement of his pharmacy technician registration.

\* \* \* \* \*

WHEREFORE, the following Order is hereby made:

ORDER

Pharmacy technician registration number TCH-48039 and registration rights previously issued by the Board of Pharmacy to respondent Daniel Moises Sanchez are revoked, based on Conclusion of Law 1 and 4 above. Respondent Daniel Moises Sanchez will not be directed to pay the reasonable costs of investigation and enforcement at this time, but the Board of Pharmacy may require the payment of these costs as a condition for reinstatement of the registration in the future.

Dated: April 6, 2012



Vincent Nafarrete  
Administrative Law Judge  
Office of Administrative Hearings

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8

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

12 In the Matter of the Accusation Against:

Case No. 3791

13 **DANIEL MOISES SANCHEZ**  
3915 S. Wilton Place  
14 Los Angeles, CA 90062

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

15 Pharmacy Technician Registration  
No. TCH 48039

16 Respondent.  
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.

22 2. On or about August 15, 2003, the Board of Pharmacy issued Pharmacy Technician  
23 Registration No. TCH 48039 to Daniel Moises Sanchez (Respondent). The Pharmacy Technician  
24 Registration was in full force and effect at all times relevant to the charges brought herein and  
25 will expire on December 31, 2012, 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, in pertinent part, that the expiration of a license  
3 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period  
4 within which the license may be renewed, restored, reissued or reinstated.

5       5.     Section 490 states, in pertinent part:

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

10       “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
11 discipline a licensee for conviction a crime that is independent of the authority granted under  
12 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
13 of the business or profession for which the licensee’s license was issued.

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

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

22       7.     Section 4301 states, in pertinent part:

23       “The Board shall take action against any holder of a license who is guilty of unprofessional  
24 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.  
25 Unprofessional conduct shall include, but is not limited to, any of the following:

26       .....

27       ///

28       ///



1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
11 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
12 Respondent has been convicted of a crime substantially related to the qualifications, functions, or  
13 duties of a pharmacy technician. On or about May 7, 2010, Respondent was convicted by a jury  
14 of one felony count of violating Penal Code section 245, subdivision (a)(2) [assault with a  
15 firearm] and one felony count of Penal Code section 245, subdivision (a)(1) [assault with a deadly  
16 weapon] in the criminal proceeding entitled *The People of the State of California v. Daniel*  
17 *Moises Sanchez* (Super. Ct. Los Angeles County, 2010, No. BA354354). The Court sentenced  
18 Respondent to six (6) years in State Prison. The circumstances surrounding the conviction are  
19 that on or about March 20, 2009, Respondent was at a 76 Gas Station, in Los Angeles, CA  
20 pumping gas. He went inside to pay and when he returned to his vehicle, he saw the victim inside  
21 his vehicle. Respondent confronted the victim, which caused him to flee the location. He chased  
22 the victim down the street with an aluminum baseball bat. Respondent and another male drove  
23 around looking for the victim. When they found him, the other male pulled out a gun, fired  
24 several rounds at the victim, and Respondent drove away. Respondent was subsequently arrested  
25 for violating Penal Code section 187, subdivision (a) [attempted murder].

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27 ///

28 ///



PRAYER

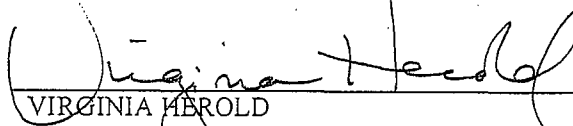
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 48039, issued to Respondent;

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

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

DATED: 2/23/11



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

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