

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

In the Matter of the Accusation Against:

JENNIFER LEDORON GALAVIZ,

Pharmacy Technician Registration No. TCH
76816,

Respondent.

Case No. 3924

OAH Case No. 2011060047

DECISION

The Board of Pharmacy hereby adopts the attached Proposed Decision, dated March 28, 2012, as its decision in the above-entitled matter except that, pursuant to the provisions of Government Code sections 11517(c)(2)(B) and 11517(c)(2)(C), the proposed penalty is reduced and the following technical changes are made to the Decision:

- (1) On page 10, term and condition No. 13, "No Ownership of Licensed Premises," shall be struck from the decision.
- (2) On page 11, in the second sentence of paragraph 1 of the term and condition entitled "Random Drug Screening," the word "alcohol" shall be deleted, so that the sentence states:

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

- (3) On pages 7 and 8, the term and Condition No. 6, "Notice to Employers," contains the incorrect case number. Consequently, the current case number listed in that section shall be struck and replaced with case number "3924."
- (4) Throughout the Order, delete the term "his" or "he" from the relevant portions of the Order where the Order is intended to refer to the Respondent, and use only the words "her" or "she."

Based upon the foregoing amendments to the Order, the Board's Order, in its entirety, now reads as follows:

ORDER

Pharmacy technician registration number TCH 76816 issued to respondent JENNIFER LEDORON GALAVIZ is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3924 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3924 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3924 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3924 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgments to the Board shall be considered a violation of probation.

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

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,477.50. Respondent shall make said payments as directed by the Board. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

8. Probation Monitoring Costs

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

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This license surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Random Drug Screening

Respondent, at her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire

probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent.

Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

14. Abstain from Drug Use

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation

shall be considered a violation of probation. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

15. Violation of Probation

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

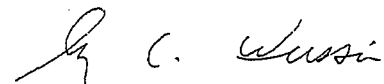
If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof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

16. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

This Decision shall become effective on June 15, 2012.

IT IS SO ORDERED this 16th day of May 2012.



STAN C. WEISSER
President, Board of Pharmacy

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

In the Matter of the Accusation Against:

Case No. 3924

JENNIFER LEDORON GALAVIZ

OAH No. 2011060047

Pharmacy Technician Registration No. TCH
76816

Respondent.

PROPOSED DECISION

This matter was heard by Humberto Flores, Administrative Law Judge, Office of Administrative Hearings, on March 2, 2012, in San Bernardino, California.

Deputy Attorney General William D. Gardener represented complainant. Jennifer Ledoron Galaviz (respondent) represented herself. Evidence was received and the matter was submitted.

FACTUAL FINDINGS

1. Virginia Herold made and filed the Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.
2. On June 28, 2007, the Board issued Pharmacy Technician Registration No. TCH 76816 to respondent. Said license is in full force and effect.
3. On May 8, 2007, in the Superior Court of California, County of San Bernardino (Case No. FVI700843), respondent entered a plea of nolo contendere and was convicted of violating of Penal Code section 273, subdivision (a), willful cruelty to a child. Imposition of sentence was suspended and respondent was placed on supervised probation for a period of 48 months on certain terms and conditions, including, inter alia, completing a 52-week child abuse prevention program, and attending narcotics/alcoholic anonymous (NA or AA) meetings as directed by respondent's probation officer.

4. The facts and circumstances of the offense occurred on April 27, 2007, when respondent's husband was arrested by San Bernardino Sheriff's Deputies for illegally transporting a controlled substance (methamphetamine). Thereafter, arresting deputies executed a search warrant at respondent's apartment. During the search of respondent's apartment, deputies found methamphetamine, marijuana, drug paraphernalia, scales and loaded firearms, including a loaded 22 semi-automatic rifle. These items were in the apartment and within reach of respondent's five children who were present during the execution of the search warrant. When questioned by deputies, respondent admitted using methamphetamine one week prior. Respondent's husband, who was unemployed at the time, started selling drugs shortly before respondent's arrest. Although respondent occasionally used drugs, she was not involved in the transportation or sales of drugs.

5. After respondent's arrest, the Los Angeles County Department of Children's Services took custody of respondent's children. Respondent's children were returned to her after she completed a parenting program in 2008.

6. Respondent has been a pharmacy technician for 5 years with no previous discipline. She completed all of the terms of probation including the 52-week child abuse prevention program as well as the NA program ordered by the criminal court. Respondent has not used drugs since the week prior to her arrest

7. Respondent has worked for the pharmacy department at Wal Mart since 2006. After her employer became aware of her arrest and conviction, respondent was temporarily suspended and was directed to participate in counseling and to undergo drug testing. After completing the counseling program and passing all of the drug tests, respondent was allowed to return to her position as a pharmacy technician in 2008. Throughout this difficult time, respondent has maintained employment at Wal Mart. After respondent returned to her position, she has performed her job competently. In fact, respondent received excellent performance evaluations over the past two years. Her 2010 and 2011 evaluations indicate that respondent "exceeded expectations" in performing her job duties. Her supervisor noted in the comments sections that "Jennifer has taken charge of inventory ordering and demonstrates full knowledge of Wal Mart policies and procedures concerning this task. She is familiar with state and federal regulations concerning controlled substances and shares this knowledge with fellow associates. . . . [She] is the #1 technician in the department [and is] a role model for new and existing associates." (Exhibits A and B.)

8. Respondent and her husband have five children. Since custody of her children was returned to respondent and her husband in 2008, respondent has been able to keep her family together. She provides the financial support for the family. Respondent's family life is now stable. Her husband no longer uses drugs and her children are performing well in school. Respondent is motivated to support her five children and to keep her family together.

9. Complainant submitted certification of costs of enforcement totaling \$5,477.50. The requested costs are reasonable under Business and Professions Code section 125.3.

LEGAL CONCLUSIONS

1. Grounds exist to suspend or revoke respondent's pharmacy technician registration pursuant to Business and Professions Code sections 490, 4300 and 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, based on respondent's conviction and the underlying circumstances set forth in Factual Findings 3 and 4.

2. Grounds exist to suspend or revoke respondent's pharmacy technician's license for unprofessional conduct pursuant to Business and Professions Code sections 4301, subdivision (h), because respondent used controlled substances or dangerous drugs in a manner injurious to herself or others, as set forth in Factual Finding 4.

3. Grounds exist to suspend or revoke respondent's pharmacy technician's license for unprofessional conduct pursuant to Business and Professions Code sections 4060, because respondent possessed controlled substances or dangerous drugs, as set forth in Factual Finding 4.

4. Grounds exist to order respondent to pay the Board \$5,477.50 under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 6.

5. The Board has the responsibility to protect the public. In discharging this responsibility, the Board has promulgated guidelines which set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case as follows:

1. *Actual or potential harm to the public* – Here, respondent's actions created potential harm to the public and to her children.
2. *Actual or potential harm to any consumer* – Respondent's use of drugs created a potential harm to consumers because this conduct has a direct relationship with the specific duties of pharmacy technician.
3. *Prior disciplinary record, including level of compliance with disciplinary order(s)* – Respondent has no prior license discipline.

4. *Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)* – Respondent has not received any prior warnings, citations or fines from the Board
5. *Number and/or variety of current violations* – Respondent has only one conviction.
6. *Nature and severity of the act(s), offense(s) or crime(s) under consideration* – Respondent's misconduct was a serious violation.
7. *Aggravating evidence* – The aggravating evidence in this case was that respondent allowed her husband's drug activity and her own drug use to affect the lives of her children.
8. *Mitigating evidence* – No mitigating evidence in this case.
9. *Rehabilitation evidence* – Respondent presented substantial evidence of rehabilitation as set forth in Factual Findings 6, 7 and 8.
10. *Compliance with terms of any criminal sentence, parole, or probation* – Respondent completed all of the terms and conditions of her probation.
11. *Overall criminal record* – The conviction that is the subject of these proceedings represents the entirety of respondent's criminal record.
12. *If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code* – Respondent's conviction has not been expunged.
13. *Time passed since the act(s) or offense(s)* – Respondent's conviction is five years old.
14. *Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct* – Respondent's conduct of using drugs is an intentional act. Her conduct in allowing firearms to remain in the house in the presence of her children was an act of extreme carelessness.
15. *Financial benefit to the respondent from the misconduct* – Respondent received no financial benefit from her misconduct.

6. In its guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively

minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's misconduct is considered a category III offense because it involved the use of drugs and presented a serious potential for harm.

7. In consideration of all of the facts and circumstances of this case, the public would be adequately protected by placing respondent's license on probation with appropriate conditions. Because respondent has used drugs in the past, the probationary order should include a condition for drug testing. However, the evidence did not establish that respondent is an addict or chemically dependant. During respondent's testimony, the undersigned did not observe any outward signs that would indicate that respondent is addicted to drugs. She was alert, well kempt, and articulate in her testimony. Nor did the evidence indicate any "red flags" that are usually associated with a drug abuser or addict. For example, there was no evidence that respondent has been consistently tardy for work, or lethargic while at work; nor has she been accused of any wrongdoing while handling drugs or otherwise performing her duties as a pharmacy technician. In fact, respondent performs her job duties very well as evidenced by her outstanding evaluations from her supervisors at Wal Mart, who consider respondent to be a role model for other pharmacy technicians. Respondent is the sole financial support for her family. She is highly motivated to continue her rehabilitation and to maintain her employment so that she can preserve her family unit.

8. While the nature of respondent's offense would ordinarily call for a term of actual suspension, the evidence of rehabilitation in this case indicates that such a condition of probation is not warranted. Further, respondent has already served a work suspension of three months, which was imposed by her employer Wal Mart.

ORDER

Pharmacy Technician Registration No. 76816 issued to respondent Jennifer Ledoron Galaviz is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he or she is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order. Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

3. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of

delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

4. Interview with the Board

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

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3924 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3246 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy

employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 3246 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

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

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$5,477.50. Respondent shall make said payments as directed by the Board. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the Board its costs of investigation and prosecution.

8. Probation Monitoring Costs

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

9. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's pharmacy technician license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to

tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his or her pharmacy technician license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number. Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. No Ownership of Licensed Premises

Respondent shall not acquire any new ownership, legal or beneficial interest nor serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any additional business, firm, partnership, or corporation licensed by the board. If respondent currently owns or has any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the board, respondent may continue to serve in such capacity or hold that interest, but only to the extent of that position or interest as of the effective of this decision. Violation of this restriction shall be considered a violation of probation.

14. Random Drug Screening

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent.

Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

15. Abstain from Drug Use

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the board or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

16. Violation of Probation

If a respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended,

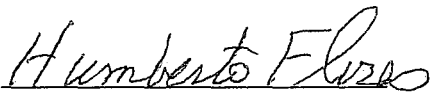
until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

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

17. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

DATED: March 28, 2012


HUMBERTO FLORES
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3924

12 **JENNIFER LEDORON GALAVIZ**

13 16153 Menahka Rd.
Apple Valley, CA 92307

14 Pharmacy Technician License No. TCH 76816

15 Respondent.

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 (Board).

21 2. On or about June 28, 2007, the Board issued Pharmacy Technician License No. TCH
22 76816 to Jennifer Ledoron Galaviz (Respondent). The Pharmacy Technician License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December
24 31, 2012, 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.

1 8. Section 4300 permits the Board to take disciplinary action to suspend or revoke a
2 license issued by the Board.

3 9. Section 4301 states, in pertinent part:

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

7

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

11 "(g) Knowingly making or signing any certificate or other document that falsely
12 represents the existence or nonexistence of a state of facts.

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

18

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

21

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

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

11 10. Section 4060 states:

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

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

26 11. Section 1210.1(e)(3) of the California Penal Code provides that the dismissal of a
27 complaint or indictment pursuant to the successful completion of a diversion program under the
28 Penal Code does not relieve an applicant "of the obligation to disclose the arrest and conviction in

1 response to any direct question contained in any questionnaire or application . . .for licensure by
2 any state or local agency”

3 **REGULATORY PROVISION**

4 12. California Code of Regulations, title 16, section 1770 states:

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

11 **DRUG STATUTES**

12 13. Methamphetamine is a Schedule II controlled substance as designated by California
13 Health and Safety Code section 11055(d)(2) and is categorized as a dangerous drug pursuant to
14 Business and Professions Code 4022.

15 14. Marijuana is a Schedule I controlled substance as designated by California Health and
16 Safety Code section 11054(d)(13) and is categorized as a dangerous drug pursuant to Business
17 and Professions Code 4022.

18 15. California Health and Safety Code section 11550(a) prohibits the non-prescription use
19 of controlled substances.

20 16. California Health and Safety Code section 11177, subdivision (a), states:

21 "Except as authorized by law and as otherwise provided in subdivision (b) or Section
22 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the
23 Business and Professions Code, every person who possesses any controlled substance which is . .
24 . (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a
25 physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished
26 by imprisonment in a county jail for a period of not more than one year or in the state prison."

27 ///

28 ///

1 COST RECOVERY

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

6 FIRST CAUSE FOR DISCIPLINE

7 (Criminal Conviction)

8 18. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and
9 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
10 that Respondent was convicted of a crime which is substantially related to the qualifications,
11 functions, or duties of a pharmacy technician, as follows:

12 19. On or about May 8, 2007, in the criminal matter *People of the State of California vs.*
13 *Jennifer Ledoron Galaviz* (Super. Ct. County of San Bernardino, 2007, No.FVI700843),
14 Respondent entered a plea of nolo contendere and was convicted of felony violation of California
15 Penal Code section 273(a), willful cruelty to child/possible injury or death. A second charge for
16 felony violation of California Health and Safety Code section 11379, unlawful transportation of
17 controlled substance, was dismissed pursuant to a plea agreement.

18 20. The basis for Respondent's conviction for felony child endangerment was that on or
19 about April 27, 2007 Respondent's husband was arrested for illegal transportation of a controlled
20 substance (methamphetamine). Immediately thereafter, the San Bernardino Sheriff's Office
21 executed a search warrant at Respondent's apartment. During their search of Respondent's
22 apartment, officers located methamphetamine, marijuana, drug paraphernalia and loaded firearms.
23 Because these items were found to be within reach of the five children who resided at the
24 apartment with Respondent, and due to filthy living conditions at the apartment, Respondent was
25 arrested and later convicted of violation of California Penal Code section 273(a), willful cruelty to
26 child/possible injury or death.

27 ///

28 ///

1 21. Pursuant to this conviction, Respondent was placed on probation for a period of 48
2 months and ordered to participate in child abuse counseling and to attend Narcotics Anonymous
3 meetings as directed by her probation officer.

4 **SECOND CAUSE FOR DISCIPLINE**
5 **(Unlawful Possession of Controlled Substances)**

6 22. Respondent is subject to disciplinary action under section 4060 of the Code in that at
7 the time of her arrest for child endangerment Respondent unlawfully possessed controlled
8 substances. The circumstances are as follows:

9 23. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
10 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
11 located methamphetamine and marijuana. At that time, Respondent acknowledged to officers
12 that she had been involved in the unlawful distribution of methamphetamine.

13 **THIRD CAUSE FOR DISCIPLINE**
14 **(Dangerous Use of Controlled Substances)**

15 24. Respondent is subject to disciplinary action under section 4301(h) of the Code in that
16 she used a controlled substance in a manner injurious to herself and others and to an extent that
17 impaired her ability to conduct with safety to the public the work of a licensed pharmacy
18 technician. The circumstances are as follows:

19 25. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
20 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
21 located methamphetamine, marijuana, drug paraphernalia and loaded firearms. Because these
22 items were within reach of the five children who resided with Respondent at the apartment, and
23 because of the filthy living conditions observed by the officers, Respondent was arrested for child
24 endangerment. At that time, Respondent acknowledged to officers that she had recently used
25 methamphetamine.

26 ///
27 ///
28 ///

1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Drug Statute Violations)**

3 26. Respondent is subject to disciplinary action under section 4301(j) of the Code in that
4 Respondent violated state and federal statutes regulating controlled substances and dangerous
5 drugs. The circumstances are as follows:

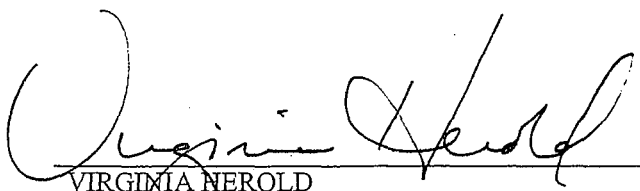
6 27. On or about April 27, 2007 the San Bernardino Sheriff's Office executed a search
7 warrant at Respondent's apartment. During their search of Respondent's apartment, officers
8 located methamphetamine and marijuana. At that time, Respondent acknowledged to officers
9 that she had recently used methamphetamine and had also been involved in the unlawful
10 distribution of methamphetamine.

11 **PRAYER**

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

- 14 1. Revoking or suspending Pharmacy Technician License No. TCH 76816, issued to
15 Jennifer Ledoron Galaviz;
- 16 2. Ordering Jennifer Ledoron Galaviz to pay the Board the reasonable costs of the
17 investigation and enforcement of this case, pursuant to section 125.3; and
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: 4/18/11


22 VIRGINIA NEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant

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