

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

In the Matter of the Accusation Against:

ALMA DELIA VASQUEZ
12050 Rockridge Drive
Fontana, CA 92337

Pharmacy Technician Registration No. TCH
75523

Respondent.

Case No. 3980

OAH No. 2012010919

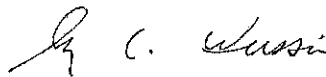
DECISION AND ORDER

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

This decision shall become effective on January 11, 2013.

It is so ORDERED on December 12, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

BEFORE THE
CALIFORNIA STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

In the Matter of the Accusation against:

ALMA DELIA VASQUEZ

Pharmacy Technician Registration
No. TCH 75523,

Respondent.

Case No. 3980

OAH No. 2012010919

PROPOSED DECISION

Robert Walker, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 31, 2012, in San Bernardino, California.

Gloria A. Barrios, Deputy Attorney General, Department of Justice, State of California, represented the complainant, Virginia Herold, Executive Officer of the Board of Pharmacy.

The respondent, Alma Delia Vasquez, appeared in propria persona.

The record was closed on August 31, 2012.

SUMMARY

Respondent is licensed as a pharmacy technician.

In 2002, respondent was convicted of petty theft. Complainant alleges the conviction as a cause for disciplining respondent's license.

In 2007, respondent applied for licensure. In her application, she did not disclose the 2002 conviction. Complainant alleges the failure to disclose as a cause for disciplining respondent's license.

On an occasion in August of 2010, respondent was in possession of cocaine, a controlled substance.

Respondent consumed alcoholic beverages to an extent or in a manner that was

dangerous, and complainant alleges respondent's alcohol consumption as a cause for disciplining respondent's license.

In 2012, respondent was convicted of spousal abuse. Complainant alleges the conviction as a cause for disciplining respondent's license.

Complainant alleges that the conduct that gave rise to the 2012 conviction for spousal abuse was conduct that involved moral turpitude and, therefore, constituted a cause for disciplining respondent's license.

The ultimate issues are: Should respondent's license be disciplined? If it should be disciplined, what discipline is appropriate?

Complainant also seeks cost recovery, and there are issues regarding the prayer for cost recovery.

In this decision, it is determined that respondent's license should be revoked.

FACTUAL FINDINGS

Background

1. On June 11, 2007, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 75523 to the respondent, Alma Delia Vasquez.

2. On July 1, 2007, respondent began working as a pharmacy technician at St. Jude Medical Center in Fullerton, California. She worked on-call until approximately February of 2012, when she became a regular part-time employee.

Conviction in 2002

3. On June 27, 2002, in the Superior Court of California for the County of Santa Barbara, respondent was convicted of violating Penal Code section 484, subdivision (a), petty theft, a misdemeanor. The conviction was on a plea of nolo contendere. The court deferred entry of judgment and placed respondent on probation for one year. Respondent testified that she successfully completed the probation.

4. The incident that gave rise to the conviction occurred on May 10, 2002, in a K-Mart store in Goleta, California. Respondent testified that she took CDs and cosmetics without paying for them.

5. The crime of which respondent was convicted on June 27, 2002, is one that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

6. The crime of which respondent was convicted on June 27, 2002, is one that involves moral turpitude.

The 2007 Failure to Disclose

7. In 2007, which was five years after respondent's 2002 conviction for petty theft, she applied for licensure as a pharmacy technician. In her application, she did not disclose the conviction. One question on the application form asked:

Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States, or any state laws or local ordinances? You must include all *misdemeanor* and felony convictions (Italics added.)

8. Respondent testified that her failure to disclose was not intentional. She said she thought one was required to disclose only felony convictions. That testimony was not credible. The instructions in the form are simple, clear, and explicit.

Possession of Cocaine 2010

9. On August 30, 2010, an officer with the Fontana police department responded to a report of a domestic disturbance. The officer wrote a police report in which he said he tested a white powdery substance that had been in respondent's possession and that the substance tested positive for cocaine.

10. Respondent testified that, when she used drugs, she used cocaine. She said that, at one time, she had a cocaine addiction.

11. After respondent's arrest and before she entered a plea to criminal charges, she enrolled in a drug rehabilitation program. The program was provided by Inland Behavioral and Health Services, Inc.

12. Respondent was charged with possession of a controlled substance. The court permitted respondent to participate in a drug diversion program pursuant to Penal Code sections 1000 through 1000.5. Respondent agreed to enter a plea of guilty and continue attending the drug abuse counseling program in which she had enrolled. The court deferred the entry of judgment to give respondent an opportunity to complete the drug abuse counseling program and have the charges dismissed.

13. Respondent satisfied all of the requirements of the deferred entry of judgment agreement. The court accepted respondent's withdrawal of her guilty plea and dismissed the case. It is deemed that respondent was not convicted of a crime.

14. Thus, there is no drug related conviction that could constitute cause for disciplining respondent's license. That, however, does not mean that the underlying conduct

cannot constitute cause for discipline. Complainant does allege the underlying conduct – the possession – as a cause for discipline. As noted above, the officer stated that he tested a white powdery substance that had been in respondent’s possession and that the substance tested positive for cocaine. The officer’s statement supports a finding that respondent was in possession of cocaine.

Conviction in 2012

15. On April 11, 2012, in the Superior Court of California for the County of San Bernardino, respondent was convicted of violating Penal Code section 273.5, subdivision (a), spousal abuse, a misdemeanor. The conviction was on a plea of nolo contendere. The court deferred entry of judgment and placed respondent on probation for 36 months. As conditions of probation, the court required respondent to pay fines and fees totaling \$602 and complete a 52-week batterer’s treatment program. As a further condition of probation, the court required respondent to serve 90 days in jail but allowed her to serve that time in a work release program. The court imposed other standard conditions of probation.

16. The incident that gave rise to the conviction occurred on November 22, 2011. As of 2011, respondent and the man with whom she lives had been together for approximately 10 years. Respondent acknowledges that, on November 22, 2011, she was under the influence of alcohol. Respondent’s partner took her car keys and told her she was too intoxicated to drive. An altercation ensued in which respondent threw and broke items in the home and hit her partner numerous times. Respondent testified that she did not intentionally hurt her partner, but she acknowledged that she threw an object that cut his arm. Respondent’s partner sustained minor injuries. Respondent testified that she becomes very angry when her partner tries to stop her from leaving the house. She said she never gets angry with other people.

17. Respondent’s probation is scheduled to terminate on April 11, 2015.

18. The crime of which respondent was convicted on April 11, 2012, is one that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

19. The crime of which respondent was convicted on April 11, 2012, is one that involves moral turpitude.

20. Complainant alleges that, on the occasion of the incident that gave rise to the April 11, 2012, conviction, respondent was in possession of cocaine. Complainant, however, submitted no evidence in support of that allegation.

Mitigation and Extenuation

21. As noted above, respondent testified that, at one time, she had a cocaine addiction. She said, however, that she never went to work under the influence of drugs and never took drugs from her employer.

Rehabilitation

22. Respondent testified that she has not used cocaine since August 30, 2010, which, as noted above, was the day she was arrested for possession. As also noted above, respondent enrolled in a drug rehabilitation program provided by Inland Behavioral and Health Services, Inc. Respondent attended classes three days a week for three hours a day. The classes addressed anger management, relapse prevention, self esteem, dealing with daily life, and other matters. Respondent completed that program on April 7, 2011.

23. On July 13, 2012, respondent entered a 30-day residential program at the MFI Recovery Center, which operates recovery programs in Riverside and surrounding communities. Respondent voluntarily entered the program. Diane Blanscett, CADCA, a counselor in the MFI center, wrote a letter dated August 11, 2012, in which she said:

While in our program, Ms. Vasquez attended and participated consistently in group sessions, including, but not limited to, early recovery skills, relapse prevention, sober living skills, communication re-training, cognitive distortion identification, self-esteem, anger management, 12-steps, emotional regulation skills, neurobiology of addiction, families in recovery, stress management, and coping skills.

24. On August 11, 2012, respondent completed the 30-day residential program at the MFI Recovery Center. On August 27, 2012, respondent entered MFI's intensive outpatient treatment program. Respondent testified that she chose to continue with a treatment program "because I feel I have an alcohol problem that I want to address." MFI presented respondent with an undated certificate in recognition of her completion of 24 group sessions of intensive outpatient therapy. The certificate is signed by Jason Chavez, RRW, Counselor I. Respondent continues to participate in the MFI outpatient program.

25. Respondent attends Narcotics Anonymous and Alcoholics Anonymous meetings "on and off." She, however, has never worked the steps in either program and has never had a sponsor.

26. Respondent testified, "I am an alcoholic. I drink Vodka." Such testimony does not necessarily mean that one thinks he or she currently has a problem with alcoholism. Many people who have not had a drink in decades identify themselves as alcoholics because of the theory that alcoholism cannot be cured – only controlled. Respondent, however, does think she currently has a problem. She entered the MFI intensive outpatient program just four days before the hearing in this matter because she feels she has an alcohol problem. Respondent testified, "I continue to work on becoming sober."

27. Respondent testified that, in satisfaction of one of the conditions of her 2012 probation, she is attending a 52-week batterer's treatment program.

Supervisor's Recommendation

28. As noted above, respondent has worked as a pharmacy technician at St. Jude Medical Center in Fullerton, California. Don Miller is the Director of Pharmacy for the medical center. Mr. Miller wrote a recommendation dated August 30, 2012. Respondent testified that Mr. Miller is aware of her history of substance abuse, her criminal convictions, and the charges in the accusation. Mr. Miller's recommendation tends to corroborate that he is aware of the fact that a disciplinary action is pending; his recommendation is addressed to the board. Mr. Miller wrote:

I have known Alma Vasquez since she began working at St. Jude Medical Center on July 1, 2007. In the time since her hire, Alma has been a dedicated employee, working as an on-call technician until her recent promotion to part-time status. She is well liked by her colleagues and has been an integral part of our pharmacy team since her hire.

Cost Recovery

29. Complainant submitted a cost certification showing costs for the Attorney General's services in the amount of \$2,495. Attached to the certification is a description of the tasks performed and the time spent on the various tasks. The certification satisfies California Code of Regulations, title 1, section 1042, subdivision (b)(3). It is found that those costs were incurred and are reasonable.

LEGAL CONCLUSIONS

Cause to Suspend or Revoke Respondent's Registration

1. By reason of the matters set forth in Findings 3 through 6 and 15 through 19, it is determined that respondent has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician. Thus, pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), there is cause to suspend or revoke respondent's license.

2. By reason of the matters set forth in Findings 9 through 11, it is determined that respondent violated statutes regulating controlled substances. Possession of cocaine is a violation of Health and Safety Code section 11350, subdivision (a). Possession of a controlled substance, with exceptions that are not applicable here, is a violation of Business and Professions Code section 4060. Thus, pursuant to Business and Professions Code section 4301, subdivisions (j) and (o), there is cause to suspend or revoke respondent's license.

3. By reason of the matters set forth in Findings 16 and 26, it is determined that respondent consumed alcoholic beverages to an extent or in a manner that was dangerous or injurious to herself or to the public. Thus, pursuant to Business and Professions Code section 4301, subdivisions (h), there is cause to suspend or revoke respondent's license.

4. By reason of the matters set forth in Findings 3 through 6 and 7 and 8, it is determined that, in respondent's application for registration as a pharmacy technician, she knowingly failed to disclose her 2002 conviction for petty theft. Thus, respondent knowingly made a false representation, and pursuant to Business and Professions Code section 4301, subdivision (g), there is cause to suspend or revoke respondent's license.

5. By reason of the matters set forth in Findings 15 through 19, it is determined that the conduct that gave rise to respondent's 2012 conviction involved moral turpitude. As of 2011, respondent and the man with whom she lives had been together for approximately 10 years. Such a relationship involves at least an implicit commitment not to harm each other. Battery ordinarily does not involve moral turpitude. But battery on a person with whom one has a special relationship and to whom one owes a special duty does involve moral turpitude. Thus, pursuant to Business and Professions Code section 4301, subdivision (f), there is cause to suspend or revoke respondent's license.

Rehabilitation

6. There is evidence that respondent has made progress toward rehabilitation, and she is to be congratulated for that. For almost the entire period during which respondent made that progress, however, she was either satisfying the terms of her drug diversion program or on criminal probation.

Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that a bar applicant attempting to show rehabilitation did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole. [Citation.] Similarly, good conduct generally is expected from someone who has applied for admission with, and whose character is under scrutiny by, the State Bar. [Citation.] (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

7. The fact that someone who is on probation complies with the conditions of her probation "does not necessarily prove anything but good sense." (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 473.)

8. Unless respondent obtains an early termination of probation she will continue to be on probation until April of 2015.

9. Moreover, there was little evidence to corroborate respondent's testimony that she has not used cocaine since August 30, 2010. From Mr. Miller's statement that respondent has been a dedicated employee working on an on-call basis, one can infer that respondent has not used cocaine to an extent that would cause her to be unable to function in the workplace. Respondent, however, did not provide more direct corroborating evidence such as the results of random drug testing.

10. Respondent's claim that she misunderstood the board's application form and thought there was no need to disclose her misdemeanor conviction also is cause for serious concern. That claim, *which respondent made in the present proceeding*, is not credible.

Appropriate Discipline

11. On this record, the appropriate discipline is outright revocation.

Cost Recovery

12. By reason of the matters set forth in Factual Finding 29, it is determined that the board's costs in this matter were \$2,495 and that, within the terms of Business and Professions Code section 125.3, those costs were reasonable.

13. In *Zuckerman v. State Board of Chiropractic Examiners*,¹ a case in which the State Board of Chiropractic Examiners had disciplined a license, the Supreme Court of California dealt with the issue of cost recovery.

14. Zuckerman contended that the cost recovery provision was unconstitutional. The Supreme Court emphasized three factors to be considered in determining whether the recovery of prehearing costs is constitutionally permissible. One factor is the private interest that will be affected. The second factor is the risk of an erroneous deprivation of that interest. Finally, there is the factor of the government's interest.

15. First, the private interest that will be affected regarding chiropractors and other professionals is the right to practice one's profession, an important interest.

16. Second, what is the risk that a cost recovery procedure will erroneously deprive a person of a right to practice a profession or engage in a business or non-professional employment? In *Zuckerman*, the Court noted that a licensee with limited financial resources who was innocent of alleged misconduct might forego a hearing for fear a board would erroneously sustain the charges and order the licensee to reimburse costs. The court noted, also, that a licensee charged with several acts of misconduct might forego a hearing for fear of being assessed costs if even one charge were found to be true. The Court

¹ *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32.

said, “These concerns are not insubstantial.”² The Court concluded, however, that the risks were minimized because the provision in question was “merely discretionary, because the administrative law judge must determine whether the Board’s costs are ‘reasonable,’ and the Board may ‘reduce or eliminate’ the administrative law judge’s cost award.”³

17. The Court held that “the Board must exercise its discretion to reduce or eliminate cost awards in a manner that will ensure that . . . [cost recovery] does not deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing.” The court established five rules that an agency must observe in assessing the amount to be charged. To some extent, these rules are similar to matters one would consider in determining whether costs are reasonable. The Court’s rules, however, go beyond consideration of whether the costs are reasonable. The Court said:

[T]he Board must not assess the full costs of investigation and prosecution when to do so will unfairly penalize a chiropractor who has committed some misconduct but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed. The Board must consider the chiropractor’s “subjective good faith belief in the merits of his or her position” [citation] and whether the chiropractor has raised a “colorable challenge” to the proposed discipline [citation]. Furthermore, as in cost recoupment schemes in which the government seeks to recover from criminal defendants the cost of their state-provided legal representation [citation] the Board must determine that the chiropractor will be financially able to make later payments. Finally the Board may not assess the full costs of investigation and prosecution when it has conducted a disproportionately large investigation and prosecution to prove that a chiropractor engaged in relatively innocuous misconduct.⁴

18. The Court observed that a failure to exercise discretion could cause a cost recovery provision to be unconstitutional and that the availability of judicial review is a safeguard. The Court said:

[I]f the Board fails to properly exercise its discretion to limit cost assessments, its decisions may also be vulnerable to constitutional attack on the ground that, as *applied*, [the

² *Id.* at p. 44.

³ *Ibid*

⁴ *Id.* at p. 45.

regulation] unconstitutionally chills the right of chiropractors to seek a hearing.

Thus [the regulation], by granting the Board discretion not to assess the full amount of its costs, and by subjecting the Board's cost determination to judicial review, greatly limits the likelihood that cost assessments will lead to an "erroneous deprivation"⁵

19. In discussing the third factor, the importance of an agency's being able to recoup the costs of investigating misconduct, the Court noted the importance of conserving scarce fiscal resources. An agency is not prohibited from recovering costs. The only requirement is that the procedure be tailored to the capacities and circumstances of licensees who have a right to be heard. Due process requires only that an agency exercise its discretion to impose only those costs that will not chill licensees' rights to seek a hearing.⁶

20. In *Zuckerman*, the Court did not deal with business licenses or non-professional licenses, but cost recovery provisions also can affect the right to engage in a business or hold a non-professional license. Assessing costs that respondents cannot afford to pay can have a chilling effect on non-professionals against whom charges are brought in the future, and the loss of a non-professional license can have a devastating effect. Thus, it is important to guard against the risk that people who hold those licenses will erroneously be deprived of a right.

21. Respondent did engage in the conduct that is the primary focus of the accusation. Respondent, however, had a legitimate interest in pursuing a hearing. She established that she has made progress toward rehabilitation.

22. This was not a case in which the agency conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct.

23. *Zuckerman* requires that, in assessing costs, an agency must consider a licensee's "subjective good faith belief in the merits of his or her position" and must consider whether the licensee has raised a "colorable challenge" to the proposed discipline. In compliance with this requirement, the costs are reduced to \$2,000.

24. *Zuckerman* also requires that, in assessing costs, an agency must consider whether a respondent will be financially able to make payments to reimburse the board for its costs. A licensee who was innocent of charges might forego a hearing and lose his or her license because of a fear of being assessed costs he or she could not afford to pay. A licensee

⁵ *Ibid.*

⁶ *Id.* at p. 46.

whose license appropriately should be placed on probation might forego a hearing and lose his or her license outright because of that same fear.

25. Finally, the board, as is required by *Zuckerman*, must determine whether a payment schedule is necessary so that a respondent will be financially able to pay the board's costs. In this case, no evidence was adduced regarding respondent's ability to pay costs. If respondent applies for reinstatement of her license and satisfies all of the conditions for reinstatement, the board must determine whether she is financially able to reimburse the board for its costs and whether a payment schedule is necessary to enable respondent to reimburse the board for its costs.

ORDER

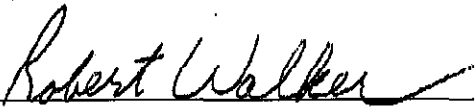
1. Pharmacy technician license number 75523, issued to the respondent is revoked. Respondent shall relinquish her technician license to the board within 10 days of the effective date of this decision.

2. Respondent may not reapply or petition the board for reinstatement of her revoked technician license for three years from the effective date of this decision.

3. As a condition to reinstatement of her revoked license respondent shall be certified as defined in Business and Professions Code section 4202, subdivision (a)(4), and shall provide satisfactory proof of certification to the board.

4. As a condition to reinstatement of her revoked license, respondent shall reimburse the board for its costs of investigation and prosecution in the amount of \$2,000. If respondent applies for reinstatement of her license and satisfies all of the conditions for reinstatement, the board shall, as is required by *Zuckerman*, determine whether she is financially able to reimburse the board for its costs. If the board determines that respondent is financially able to reimburse the board for its costs, the board shall, as is required by *Zuckerman*, determine whether a payment schedule is necessary to enable respondent to reimburse the board for its costs.

DATED: October 9, 2012


ROBERT WALKER
Presiding Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 3980

13 **ALMA DELIA VASQUEZ**
12050 Rockridge Drive
Fontana, CA 92337

FIRST AMENDED
ACCUSATION

14 Pharmacy Technician Registration
No. TCH 75523

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about June 11, 2007, the Board of Pharmacy (Board) issued Pharmacy
23 Technician Registration No. TCH 75523 to Alma Delia Vasquez (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on January 31, 2013, unless renewed.

26 **JURISDICTION**

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

4
5 **STATUTORY PROVISIONS**

6 4. Section 118, subdivision (b), provides in pertinent part, that the expiration of a license
7 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
8 within which the license may be renewed, restored, reissued or reinstated.

9 5. Section 490 states, in pertinent part:
10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

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

24 6. Section 492 states, in pertinent part:
25 "Notwithstanding any other provision of law, successful completion of any diversion
26 program under the Penal Code, or successful completion of an alcohol and drug problem
27 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
28 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2

1 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
2 division, from taking disciplinary action against a licensee or from denying a license for
3 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
4 record pertaining to an arrest."

5 7. Section 4060 states, in pertinent part:

6 "No person shall possess any controlled substance, except that furnished to a person upon
7 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
8 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-
9 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician
10 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a
11 pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the
12 possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist,
13 physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-
14 midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled
15 with the name and address of the supplier or producer."

16 8. Section 4300 provides in pertinent part, that every license issued by the Board is
17 subject to discipline, including suspension or revocation.

18 9. Section 4301 states, in pertinent part:

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

22

23 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit or
24 corruption, whether the act is committed in the course of relation of a licensee or otherwise, and
25 whether the act is a felony or misdemeanor or not.

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

28

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

6

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

9

10 "(l) The conviction of a crime substantially related to the qualifications, functions, and
11 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
12 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
13 substances or of a violation of the statutes of this state regulating controlled substances or
14 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
15 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
16 The board may inquire into the circumstances surrounding the commission of the crime, in order
17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
18 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
19 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
20 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
21 of this provision. The board may take action when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
24 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.

27

1 "(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency."

5 REGULATORY PROVISIONS

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

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 his license or registration in a manner
12 consistent with the public health, safety, or welfare."

13 COST RECOVERY

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

18 CONTROLLED SUBSTANCE

19 12. "Cocaine," is a Schedule II controlled substance, as designated by Health and Safety
20 Code section 11055(b)(6) and it is categorized as a dangerous drug according to section 4022.

21 FIRST CAUSE FOR DISCIPLINE

22 **(Conviction of Substantially Related Crimes)**

23 13. Respondent is subject to disciplinary action under sections 4301, subdivision (1) and
24 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
25 Respondent has been convicted of a crime substantially related to the qualifications, functions or
26 duties of a pharmacy technician. On or about June 27, 2002, after pleading nolo contendere,
27 Respondent was convicted of one misdemeanor count of violating Penal Code section 484,
28 subdivision (a) [484 [petty theft] in the criminal proceeding entitled *The People of the State of*

1 *California v. Alma Delia Vasquez* (Super. Ct. Santa Barbara County, 2002, No. 1077492). The
2 Court sentenced Respondent to serve 1 day in Santa Barbara County Jail and placed her on 12
3 months probation, with terms and conditions. The circumstances surrounding the conviction are
4 that on or about May 10, 2002, Respondent stole, took and carried away personal property of
5 another, to wit: K-Mart.

6 14. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
7 490, in conjunction with California Code of Regulations, title 16, section 1770, in that
8 Respondent has been convicted of a crime substantially related to the qualifications, functions or
9 duties of a pharmacy technician. On or about April 11, 2012, after pleading guilty, Respondent
10 was convicted of one misdemeanor count of violating Penal Code section 273.5, subdivision (a)
11 [spousal abuse] in the criminal proceeding entitled *The People of the State of California v. Alma*
12 *Delia Vasquez* (Super. Ct. San Bernardino County, 2011, No. FVA 1200058). The Court
13 sentenced Respondent to serve 90 days in San Bernardino County Jail and placed her on 36
14 months probation, with terms and conditions. The court also ordered Respondent to attend a 52
15 week Batterers Treatment Program. The circumstances surrounding the conviction are that on or
16 about November 22, 2011, Respondent while under the influence, beat her long standing
17 boyfriend, and broke several household items. Respondent possessed a plastic bindle containing
18 cocaine. She threw a hard metal object at her boyfriend resulting in scratches to his arm.

19 **SECOND CAUSE FOR DISCIPLINE**

20 **(Illegal Possession of a Controlled Substance)**

21 15. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and
22 (o), for violating section 4060, in that Respondent was found to be in possession of a controlled
23 substance. On or about August 30, 2010, during an investigation of a domestic disturbance
24 involving intoxication and drug possession, by the Fontana Police Department, Respondent was
25 contacted. While speaking to Respondent, the officer detected a strong odor of an alcoholic
26 beverage emitting from her breath and person. She was observed to have bloodshot, watery eyes,
27 and slurred speech. Respondent fidgeted with her hands, her head, and licked her lips rapidly.
28 Respondent's boyfriend refused to let Respondent inside his house, due to her level of

1 intoxication and bindle of drugs that he found inside her purse. When asked if the bindle was
2 hers, Respondent admitted that it belonged to her and acknowledged that it was cocaine.
3 Respondent was subsequently arrested for violating Health and Safety Code section 11350,
4 subdivision (a) [possession of a controlled substance].

5 16. Complainant refers to, and by this reference incorporates, the allegations set forth
6 above in paragraph 14, as though set forth fully.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Dangerous Use of Alcoholic Beverages or Controlled Substance)**

9 17. Respondent is subject to disciplinary action under section 4301, subdivisions (h) and
10 (j), in that on or about August 30, 2010, and November 11, 2011, Respondent used alcoholic
11 beverages or controlled substance to an extent or in a manner dangerous or injurious to herself,
12 another person, or the public. Complainant refers to, and by this reference incorporates, the
13 allegations set forth above in paragraphs 14, 15, as though set forth fully.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

16 18. Respondent is subject to disciplinary action under section 4301, subdivision (g), in
17 that Respondent knowingly made a false statement of fact to the Board by failing to disclose her
18 2002 conviction case against her, on her initial application for licensure. Complainant refers to,
19 and by this reference incorporates, the allegations set forth above in paragraph 13, as though set
20 forth fully.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Moral Turpitude)**

23 19. Respondent is subject to disciplinary action under section 4301, subdivision (f), in
24 that Respondent committed moral turpitude when she committed spousal abuse. Complainant
25 refers to, and by this reference incorporates, the allegations set forth above in paragraph 15, as
26 thought set forth fully.

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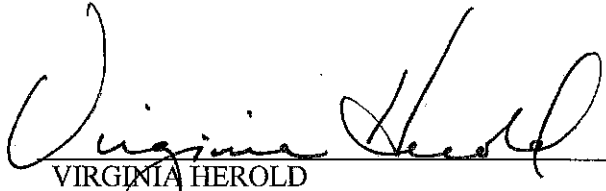
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 75523, 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: 4/27/12



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

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