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

In the Matter of the Accusation Against: **OSCAR NAVARRETE** 2649 Duomo Street Palmdale, CA 93550 Pharmacy Technician Registration No. TCH 102265 Respondent.	Case No. 4417 OAH No. 2013120683

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 October 13, 2014.

It is so ORDERED on September 11, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:	
OSCAR NAVARRETE	Case No. 4417
Pharmacy Technician Registration No. TCH 102265	OAH No. 2013120683
Respondent.	

PROPOSED DECISION

Administrative Law Judge Angela Villegas, State of California, Office of Administrative Hearings, heard this matter on July 8, 2014, in Los Angeles, California.

Sydney M. Mehringer, Deputy Attorney General, represented Complainant.

Respondent was present and represented himself.

Evidence was received. On Respondent's request, with Complainant's agreement, the record was held open until August 5, 2014, for Respondent to submit, by July 22, 2014, proof of his completion of a voluntary substance abuse rehabilitation program, and for Complainant to submit, by August 5, 2014, any response or objection thereto.

No post-hearing submissions were received.

The record was closed, and the matter submitted for decision, on August 5, 2014.

RULING ON RESERVED OBJECTION

At the administrative hearing, Respondent objected to, and moved to exclude, certain statements of Los Angeles Deputy Sheriff Teresa Steen. The statements in question recounted things Respondent said to Deputy Steen while in her custody. The grounds for

objection were that Deputy Steen violated the Fifth and Fourteenth Amendments to the United States Constitution by failing to issue *Miranda*[1] warnings before making the inquiries that elicited Respondent's statements. Respondent's objection is overruled.

FACTUAL FINDINGS

1. Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board), filed the Accusation in her official capacity. Respondent filed a notice of defense requesting a hearing.

2. Respondent is a pharmacy technician, registered with the Board under number TCH 102265 since June 3, 2010. His registration has no disciplinary history. It expired on November 30, 2013. The Board has continuing jurisdiction under Business and Professions Code section 4300.1.

3. From February 2011 to March 2013, Respondent sustained four criminal convictions, as follows.[2]

4. (a) On February 22, 2011, in the Superior Court of California, County of Los Angeles,[3] case number 0AV09197, Respondent was convicted on his guilty plea of violating Vehicle Code section 14601.5, subdivision (a) (driving with license suspended due to prior driving with excessive blood alcohol), a misdemeanor. (Conviction 1.) The court placed Respondent on 36 months' summary probation, on condition that he obey all laws, perform five days' mandatory community service, and pay fines and fees totaling $1,426 or perform 158 additional hours of community service.

(b) The court found Respondent violated his probation based on two subsequent criminal cases (Convictions 2 and 3; cf. Factual Findings 5 and 6). The court also noted Respondent's failure to timely comply with the community service and payment terms of probation, and revoked his probation on several occasions. When, as of May 17, 2013, Respondent still had not performed the mandatory or optional community service, and had not paid the fines or fees, despite several extensions of time, the court revoked his probation again. On December 16, 2013, the court "admonished" (Exhibit 10) Respondent to comply, and gave him another extension of time. Respondent did not comply by the new deadline of February 26, 2014. As of the date of the administrative hearing, Respondent's probation was still revoked, with a return date of July 30, 2014. At the administrative

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[1] *Miranda v. Arizona* (1966) 384 U.S. 436. (*Miranda*.)

[2] Conviction 2 was dismissed following Respondent's completion of a deferred entry of judgment program. (Cf. Factual Finding 5.)

[3] All of Respondent's criminal cases were in the Superior Court of California, County of Los Angeles. Further references will cite case numbers only.

hearing, Respondent claimed he had finally fulfilled his community service obligations, had been making payments toward the fines and fees, and was "working with the judge" (Respondent's testimony) to get the matter resolved. Court records (Exhibit 10) belie Respondent's characterization of his conduct as cooperative with the court. Although it may be true that Respondent has now completed his community service, his compliance was extremely belated, and he still has not complied with all terms of his probation. In addition to the probation violations found by the court, Conviction 4, and the conduct leading to it (cf. Factual Finding 7) occurred during the probationary period.

(c) Conviction 1 resulted from a traffic stop on September 16, 2010, when Respondent was found to be driving while his license was suspended. The reason for the suspension was an earlier conviction (apparently an infraction) for driving with a measurable blood alcohol concentration when he was under 21 years old.

5. (a) On January 23, 2012, in case number MA054146, Respondent pled guilty[4] to a felony charge of violating Health & Safety Code section 11350, subdivision (a) (possession of a controlled substance—heroin). (Conviction 2.) The court placed Respondent into an 18-month deferred entry of judgment program, with conditions including obedience of all laws, payment of fines and fees totaling $590, and daily attendance at Narcotics Anonymous (NA) meetings. On March 23, 2012, the court determined that Respondent need no longer attend the daily NA meetings. On July 15, 2013, Respondent completed the deferred entry of judgment program, and his plea was set aside under Penal Code section 1000.3. Although the court found no violation of the terms of Respondent's deferred entry of judgment program, Conviction 3 occurred within the deferred entry of judgment period (cf. Factual Finding 6), as did Conviction 4 and the conduct leading to it (cf. Factual Finding 7).

(b) Conviction 2 resulted from a traffic stop on September 9, 2011. Deputy Steen pulled Respondent over, and noticed pieces of charred foil lying on the passenger-side floor of Respondent's vehicle. Believing these to be evidence of heroin use, Deputy Steen asked Respondent whether he had anything illegal inside the vehicle. He responded that he had Xanax, but that it had been prescribed to him. Deputy Steen took Respondent into custody and searched the vehicle, finding a prescription bottle, labeled for Xanax and in Respondent's name. Inside the bottle, however, were several different kinds of pills, notably including Xanax and Vicodin. Respondent did not have a prescription for Vicodin. Deputy Steen also found a bindle of heroin and a pipe of a type used to smoke heroin. Deputy Steen examined Respondent's cell phone, and found text messages indicating he was offering "[n]orcs"[5] (Exhibit 9) for sale. Respondent admitted to Deputy Steen that the heroin was his, and that he had been smoking heroin for approximately a year

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[4] A guilty plea is statutorily defined as a conviction. (Bus. & Prof. Code § 4301, subd. (l).)

[5] "Norcs" is slang for "narcotics." (Testimony of Teresa Steen.)

and a half. He also told Deputy Steen he sold his Xanax pills for four dollars each as a way of supporting his heroin habit. With regard to the Vicodin, Respondent told Deputy Steen it was his, and was for personal use.

(c) At the administrative hearing, Respondent acknowledged he had made some, but not all, of the above statements to Deputy Steen. In particular, he denied telling her he possessed Vicodin, and in addition, denied that he had actually possessed it. He also denied telling her that he sold drugs. In addition, as noted previously, Respondent objected to Deputy Steen's testimony with regard to his statements (and presumably, the relevant portions of her report (Exhibit 9)), on grounds that he had not received *Miranda* warnings before she asked him the questions that led to his statements. Conversely, Deputy Steen testified she had provided Respondent with *Miranda* warnings in accordance with her training, custom, and habit, before asking the questions that elicited the above statements.

(d) Respondent's contentions were not credible. His denial that he possessed Vicodin was belied by a laboratory assay performed on the items gathered from his vehicle, the accuracy of which he stipulated to (through counsel) at the preliminary hearing in the criminal matter.[6] (Exhibit 8.) His denial that he had possessed Vicodin (or had admitted to doing so) was unbelievable in light of the undisputed laboratory evidence that he did possess the drug. Respondent's denial that he sold drugs was undermined by his text messages, recorded in Deputy Steen's report (Exhibit 9), offering to do so, and by the fact that Respondent's statement to the deputy was made while his memory was fresh, and was against his interest, increasing the likelihood of veracity.[7] Respondent's contention that he did not receive *Miranda* warnings was not credible in light of his other misstatements at the administrative hearing.[8] Moreover, Deputy Steen's testimony as to her training, custom, and habit in the provision of *Miranda* warnings, and her adherence to that training, custom, and habit in Respondent's case, was convincing and believable. The deputy's testimony was also corroborated by the fact that, in the criminal proceeding, Respondent's counsel never moved to exclude or limit the deputy's testimony, though the attorney did bring other motions on Respondent's behalf at the preliminary hearing and a pretrial conference. (Exhibit 8.) If Respondent truly had been interrogated in violation of *Miranda*, his attorney very likely would have informed the court of that fact and sought relief for Respondent based on it. The fact that no such thing happened further undermines Respondent's claim.

6. (a) On May 9, 2012, in case number 2AV00623, Respondent was convicted on his nolo contendere plea of violating Penal Code section 484, subdivision (a) (petty theft), a misdemeanor. (Conviction 3.) The court placed Respondent on three years'

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[6] The same laboratory assay confirmed Respondent's possession of Alprazolam, which is the generic name for Xanax (Testimony of Valerie Sakamura), and heroin.

[7] Cf. Evidence Code section 1230.

[8] Cataloged in this paragraph and in Factual Findings 4(b) and 6(b).

summary probation, on condition that he serve one day in county jail (less credit for one day served), and pay fines and fees totaling $976 or perform 86 hours of community service in lieu of all but $170. The original deadline for Respondent's compliance with the community service and payment terms of his probation was May 9, 2013. On May 10, 2013, he was given a 45-day extension. On December 16, 2013, the court "admonished" Respondent to comply (Exhibit 6), and ordered him to present proof of compliance by February 26, 2014. The day before this new deadline, Respondent paid the $170 due. On February 26, 2014, Respondent filed proof that he had completed the 86 hours of community service, and the court terminated his probation early. Notwithstanding the fact that the court did not expressly find Respondent in violation of his probation, Conviction 4 and the incident leading to it (cf. Factual Finding 7) occurred during the probationary period.

(b) The incident leading to Conviction 3 occurred on December 19, 2011, when Respondent took clothing (a women's jacket and two men's shirts with a total value of $130.48) from a Macy's store without paying for it. At the administrative hearing, Respondent claimed all of the clothing items had been women's, and that his then-girlfriend had actually been the thief. He explained that they had "just not [been] thinking" (Respondent's testimony) when they left the store together, and indicated he had been blamed for the girlfriend's conduct because the clothing was inside his shopping bag, and she walked away from him when they exited the store. Respondent's version of the incident was not credible. Respondent acknowledged that his ex-girlfriend had not been charged in connection with the incident. Moreover, the police report recounts Respondent's telling the investigating officer not that the theft had been an unthinking mistake, but that he "thought he would try and steal the items." (Exhibit 7.) Respondent's admission to the investigating officer was more believable than his hearing testimony. The admission was made when Respondent's memory of the incident was fresh, and was against his interest, increasing the likelihood of its veracity. Furthermore, Respondent's admission to the investigating officer was corroborated by the observations of the store's loss prevention officer, who saw Respondent himself—not Respondent's girlfriend—take two shirts from the young men's department and a jacket from the juniors department, and conceal the items in his shopping bag.[9]

7. On March 8, 2013, in case number 2AV08560, Respondent was convicted on his nolo contendere plea of violating Vehicle Code section 23152, subdivision (b), a misdemeanor. (Conviction 4.) The court placed Respondent on 36 months' summary probation, on condition that he complete a six-month first-offender alcohol education program and a "HAM" (Exhibit 4) program (requiring visits to hospital and morgue), and pay fines and fees totaling $1,917, or in lieu of $1,763 of that amount, perform 13 days of community labor. Respondent completed his six-month alcohol education program on approximately October 23, 2013. As of the date of the administrative hearing, he still had not paid the mandatory fines and fees ($154), or completed the HAM program or the

[9] Indeed, neither the loss prevention officer's statement nor the police report made any mention of a second person's having been involved in the theft. (Exhibit 7.)

community labor. He is scheduled to appear in court on these matters on July 30, 2014. The incident leading to Conviction 4 occurred at approximately 3:00 a.m. on October 21, 2012, when Respondent was pulled over for driving erratically. His blood alcohol concentration was .15 percent. Respondent is scheduled to remain on probation for Conviction 4 until March 2016.

8. Respondent recently relocated from his former home to San Diego, in an effort to restart his life and get away from people he felt were a bad influence on him. He has a new girlfriend in San Diego, and the two live together. Respondent is currently employed as a cook for Panda Express, and has worked for the company for approximately two years. He has completed between two and three years of community college, and plans to continue his studies at San Diego Community College, with a major in political science, this fall. Respondent last worked as a pharmacy technician in December 2011. He greatly enjoyed the work, and would like to return to it someday.

9. Respondent is 23 years old. He stopped using heroin on January 2, 2012, but still drinks alcohol socially—though he emphasized that he no longer drives after consuming alcohol. Whether Respondent was being wholly truthful in the latter regard was dubious, considering his other misstatements at the hearing. Although Respondent still attends an NA meeting approximately once per week, or when he feels the need to do so, he does not really believe in the 12-step program and does not follow it. Respondent also attended a voluntary substance-abuse rehabilitation program at some point, but did not provide details about it.[10] Based on these developments, Respondent believes he has changed since the time of his convictions and the conduct that led to them, and feels he deserves a second chance. He "regret[s] [his] past more than anything[, and is] not just ignoring it, but trying to take care of it as best [he] can." (Respondent's testimony.)

10. The Board's reasonable costs of investigation and enforcement in this matter total $5,952.50. Respondent's income is limited, and he still owes money in connection with one or more of his criminal cases; therefore, to repay costs at this time, he would require a payment plan.

LEGAL CONCLUSIONS

1. Complainant established cause to discipline Respondent's pharmacy technician registration on grounds of substantially-related criminal convictions: specifically, Convictions 1, 3, and 4.[11] (Factual Findings 4, 6, and 7.) (Bus. & Prof. Code §§ 490, subds.

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[10] As noted previously, the record was left open so that Respondent could provide documentation of this program, but he failed to do so.

[11] Conviction 2 does not furnish grounds for discipline as a substantially-related conviction, because it was dismissed pursuant to a court diversion program. (Bus. & Prof.

(a) – (c); 4300; and 4301, subd. (l).) Convictions 1, 3, and 4, individually and taken together, are substantially related to the qualifications, functions, and duties of a pharmacy technician because they involve disregard of law, dishonesty, and misuse of alcohol; therefore, "to a substantial degree[, they] evidence[ ] present or potential unfitness . . . to perform the functions authorized . . . in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16 (Regulation) § 1770.)

2. Complainant established further cause to discipline Respondent's registration based on his unlawful possession of controlled substances: i.e., the conduct leading to Conviction 2. (Factual Finding 5.) (Bus. & Prof. Code §§ 4300; 4301, subd. (o).) Respondent's unlawful possession of heroin and Vicodin are substantially related to the qualifications, functions, and duties of a pharmacy technician, because pharmacy technicians are entrusted with the safe and lawful handling of controlled substances, including narcotic painkillers such as Vicodin, and the unlawful possession of such substances indicates, to a substantial degree, that the pharmacy technician is presently or potentially unfit to be so entrusted. (Regulation § 1770.)

3. Complainant also established cause to discipline Respondent's registration based on his dangerous use of alcohol and drugs. (Factual Findings 4, 5, and 7.) (Bus. & Prof. Code §§ 4300; 4301, subd. (h).) Conviction 1 involved an underlying incident of alcohol misuse, and Conviction 4 was founded on Respondent's driving with excessive blood alcohol. (Factual Findings 4 and 7.) Likewise, the conduct leading to Conviction 2 involved Respondent's admitted self-administration of heroin and Vicodin. (Factual Finding 5.) Respondent's conduct in connection with these incidents is substantially related to the qualifications, functions, and duties of a pharmacy technician for the same reasons as noted in Legal Conclusion 2.

4. Complainant established cause to discipline Respondent's registration based on his violation of drug statutes. (Factual Finding 5.) (Bus. & Prof. Code §§ 4300; 4301, subd. (j).) Based on the evidence presented at the administrative hearing,[12] the conduct leading to Conviction 2, and the conduct Respondent admitted in connection with his arrest, violated Health and Safety Code sections 11170 (prohibiting the self-administration of controlled substances); 11350, subdivision (a) (prohibiting possession of controlled substance except with a valid prescription); and 11377, subdivision (a) (same), and any counterparts to those statutes under federal law. Respondent's violations are substantially related to the qualifications, functions, and duties of a pharmacy technician for the same reasons as noted in Legal Conclusion 2.

5. Complainant established further cause to discipline Respondent's registration based on his dishonest act: namely, the theft leading to Conviction 3. (Factual Finding 6.) (Bus. & Prof. Code §§ 4300; 4301, subd. (f).) Respondent's conduct is substantially related

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Code § 492.) Nevertheless, the conduct underlying it is grounds for discipline under other authority. (*Id.*) (Cf. Legal Conclusions 2 – 4.)

[12] That is, not based on Conviction 2 itself. (Bus. & Prof. Code § 492.)

to the qualifications, functions, and duties of a pharmacy technician because it involved his surreptitious removal of merchandise from a retail store. As a pharmacy technician, Respondent would have opportunities to engage in similar behavior, and the merchandise could include the controlled substances he had been entrusted to handle; therefore, Respondent's theft to a substantial degree reflects his unfitness, or potential unfitness, to carry out the functions authorized by his registration.

6. Respondent's showing of rehabilitation was insufficient to avoid revocation of his registration at this time. The Board's Disciplinary Guidelines, incorporated by reference into California Code of Regulations, title 16 (Regulation), section 1760, provide that "revocation is typically the appropriate penalty when grounds for discipline are found to exist[,]" because pharmacy technicians work under the supervision of a pharmacist, and "[t]o place a pharmacy technician on probation places an additional burden on the pharmacist . . . to ensure that the respondent pharmacy technician complies with the terms and conditions of his or her probation." (Disciplinary Guidelines (Rev. 10/2007) (Guidelines) at p. 43.)

7. No basis for deviating from the Guidelines' recommended discipline was shown in this case.

(a) Respondent's criminal and unprofessional conduct was serious, particularly the conduct involving controlled substances, the proper handling of which is central to the work of a pharmacy technician. (Factual Findings 4 – 7.) (Regulation § 1769, subds. (c)(1) and (c)(2); Guidelines, p. 3, (1), (2), (5), (6), (11), (14), and (15).) Relatively little time has passed since Respondent's convictions and the incidents from which the convictions arose, and Respondent remains on probation for Conviction 4, and under revoked probation for Conviction 1. (Factual Findings 4 – 7.) (Regulation § 1769, subd. (c)(3); Guidelines at p. 3, (13).) Respondent's criminal and unprofessional conduct was seriously aggravated by his failure to be entirely truthful in his testimony at the administrative hearing. (Factual Findings 4, 5, and 6.) (Regulation § 1769, subd. (c)(5); Guidelines at p. 3, (7).) Also in aggravation, Respondent's compliance with court directives has been inconsistent. (Factual Findings 4 – 7.) (Regulation § 1769, subd. (c)(4); Guidelines at p. 3, (7) and (10).)

(b) This is not to suggest Respondent has made no progress since his convictions and the conduct that led to them. He is to be commended for his decision to leave behind the people he felt were a bad influence (Factual Finding 8), his consistent employment (*id.*), pursuing his education (*id.*), and recognizing that his past conduct is worthy of regret and calls for change (Factual Findings 8 and 9). (Regulation § 1769, subd. (c)(5); Guidelines at p. 3, (9).) Respondent's efforts to recover from heroin addiction also deserve recognition. (Factual Finding 9.) (Regulation § 1769, subd. (c)(5); Guidelines at p. 3, (9).) Even so, Respondent continues to use alcohol, which is cause for concern given his past, and his contention that he has learned to refrain from drinking and driving was less than completely persuasive. (Factual Finding 9.)

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8. On the whole, Respondent did not demonstrate rehabilitation sufficient to support the conclusion that he can be trusted at this time to perform the functions of a pharmacy technician, even on a probationary basis, consistent with protecting the public. His convictions are too numerous, his criminal conduct too serious, and his honesty about it too dubious, to permit him to continue as a registered pharmacy technician at this time.

9. Complainant established entitlement to the reasonable costs of investigation and enforcement in this case, in the amount of $5,952.50. (Factual Finding 10.) (Bus. & Prof. Code § 125.3, subd. (a).) Payment of these costs will be a condition precedent to the reinstatement of Respondent's registration, as provided in the Order.

ORDER

Pharmacy technician license number TCH 102265, issued to Respondent Oscar Navarrete, is revoked. Respondent shall relinquish his technician license to the Board within 10 days of the effective date of this Decision. Respondent may not reapply or petition the Board for reinstatement of his revoked pharmacy technician license for three years from the effective date of this Decision. A condition of reinstatement shall be that the Respondent is certified as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. As a condition precedent to reinstatement of Respondent's revoked technician license, he shall reimburse the Board for its costs of investigation and prosecution in the amount of $5,952.50, which shall be paid in full prior to the application for reinstatement of Respondent's revoked technician license, unless otherwise ordered by the Board.

Dated: August 15, 2014

Angela Villegas
Administrative Law Judge
Office of Administrative Hearings

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BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **OSCAR NAVARRETE** 2649 Duomo Street Palmdale, CA 93550 Pharmacy Technician Registration No. TCH 102265 Respondent.	Case No. 4417 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 3, 2010, the Board issued Pharmacy Technician Registration No. TCH 102265 to Oscar Navarrete ("Respondent"). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2013, unless renewed.

JURISDICTION

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

4. Business and Professions Code section 4300.1 states:

"The expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."

STATUTORY PROVISIONS

5. Section 490 states:

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

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

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

6. Section 492 states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that

division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

"This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division."

7. Section 4300, subdivision (a), states that "[e]very license issued may be suspended or revoked."

8. Section 4301 states, in pertinent part:

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

. . . .

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

. . . .

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

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

. . . .

"(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. . . .

. . . .

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

REGULATORY PROVISION

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

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

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DRUG STATUTES

10. Health and Safety Code section 11170 states that "[n]o person shall prescribe, administer, or furnish a controlled substance for himself."

11. Health and Safety Code section 11173, subdivision (a), states that "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

12. Health and Safety Code section 11350, subdivision (a), states:

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

13. Health and Safety Code section 11377, subdivision (a), states:

"Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possess any controlled substance which is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year or in the state prison."

COST RECOVERY

14. Section 125.3 states, in pertinent part, that the Board may request the administrative

law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS

15. Heroin, a semi synthetic drug derived from morphine, is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (c)(11).

16. Vicodin, is a trade name for the narcotic substance hydrocodone or dihydrocodeinone with the non-narcotic substance acetaminophen (pain reliever and fever reducer). Vicodin is a schedule III controlled substance pursuant to Health and Safety Code section 11056, subdivision (e) and is a dangerous drug within the meaning of Business and Professions Code section 4022.

17. Xanax, a brand name for alprazolam, is an anti-anxiety benzodiazepine, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(1), and is categorized as a dangerous drug pursuant to section 4022 of the Code.

FIRST CAUSE FOR DISCIPLINE

(Convictions of Substantially-Related Crimes)

18. Respondent is subject to disciplinary action under Code sections 490, 4300, and 4301, subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct in that Respondent was convicted of crimes substantially related to the qualifications, functions, or duties of a registered pharmacy technician which to a substantial degree evidence his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare, as follows:

a. On or about March 8, 2013, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having a 0.08% or higher blood alcohol] in the criminal proceeding entitled *The People of the State of California v. Oscar Alejandro Navarrete* (Super. Ct. Los Angeles County, 2012, No. 2AV08560.) The Court placed Respondent on 36 months probation, fined him, ordered him to attend a 6 month Alcohol First Offender Program, and ordered him to attend an SB-768 program. The circumstances surrounding the conviction are that on or about October 21,

2012, Respondent drove a vehicle while his blood alcohol content was 0.08 percent or higher.

b. On or about May 9, 2012, after pleading *nolo contendere*, Respondent was convicted of one misdemeanor count of violating Penal Code section 484, subdivision (a) [theft] in the criminal proceeding entitled *The People of the State of California v. Oscar Navarrete* (Super. Ct. Los Angeles County, 2011, No. 2AV00623). The court sentenced Respondent to serve 1 day in jail, placed him probation for a period of 36 months, and fined him. The circumstances surrounding the conviction are that on or about December 19, 2011, Respondent took clothing items from a Macy's department store without paying for them.

c. On or about February 22, 2011, after pleading guilty, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.5, subdivision (a) [driving while having a suspended license pursuant to Vehicle Code sections 13353 and 13353.2], in the criminal proceeding entitled *The People of the State of California v. Oscar Navarrete* (Super. Ct. Los Angeles County, 2010, No. 0AV09197). The court placed Respondent on 36 months probation and fined him, or alternatively ordered him to perform 158 hours of community service. The circumstances surrounding the conviction are that on or about September 16, 2010, Respondent did unlawfully drive a vehicle while his driving privileges were suspended due to previously driving with an excessive blood alcohol level and refusing to take a blood alcohol test.

SECOND CAUSE FOR DISCIPLINE

(Unlawful Possession of a Controlled Substance)

19. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct in that on September 9, 2011, Respondent was found to be in possession of controlled substances and dangerous drugs without a valid prescription, as follows:

a. On or about September 9, 2011, a Los Angeles Sheriff's Department officer, while on duty during a routine traffic stop, stopped Respondent for having a loud modified exhaust in violation of Vehicle Code section 27151. The officer made contact with the Respondent, who was identified as the sole occupant of the vehicle. The officer observed in plain view on the floor of the passenger side of the vehicle several small pieces of foil that had burnt residue. During the

search of Respondent's vehicle, the officer recovered a prescription bottle with Respondent's name on it containing several different pills, later identified as Vicodin, mixed with prescription Xanax pills from the center console of the vehicle. The officer also recovered Heroin in a torn bindle inside of the fuse compartment and a plastic pipe from the glove box of Respondent's vehicle. The Respondent admitted to the officer that the Heroin belonged to him and that he has been smoking it for a year and a half. The Respondent also admitted to the officer that the Xanax pills were his and that he sells them for four dollars per pill to support his Heroin addiction. The Respondent also stated to the officer that the Vicodin pills were his and that he takes them without having a prescription.

b. On or about January 23, 2012, in the criminal proceeding entitled *The People of the State of California vs. Oscar Alejandro Navarrete* (Super. Ct. Los Angeles County, 2012, No. MA054146), the Court placed Respondent on 18 months Deferred Entry of Judgment and ordered him to attend one Narcotics Anonymous meeting per day for violating Health and Safety code section 11350, subdivision (a) [possession of a controlled substance, to wit: heroin].

THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol and Drugs)

20. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct in that Respondent used alcohol and drugs in a dangerous manner on September 16, 2010, September 9, 2011, and October 21, 2012. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 18, subparagraphs (a) and (c) and paragraph 19, subparagraph (a) as though fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Violating Drug Statutes)

21. Respondent is subject to disciplinary action under Code sections 4300 and 4301, subdivision (j), on the grounds of unprofessional conduct for violating the provisions of Health and Safety Code sections 11170, 11350, subdivision (a), and 11377, subdivision (a) by possessing controlled substances without a valid prescription. Complainant refers to, and by this reference

incorporates, the allegations set forth above in paragraph 19, subparagraph (a) as though fully set forth herein.

FIFTH CAUSE FOR DISCIPLINE

(Dishonest Acts)

22. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (f), on the grounds of unprofessional conduct in that Respondent committed an act involving deceit. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 18, subparagraph (b) as though fully set forth herein.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration No. TCH 102265, issued to Oscar Navarrete;

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

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

DATED: 10/21/13

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

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