

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

In the Matter of the Accusation Against:

YVETTE MEDINA
830 Nashua Street
La Habra, CA 90631

Pharmacy Technician Registration
No. TCH 86170

Respondent.

Case No. 4439

OAH No. 2013090446

DECISION AND ORDER

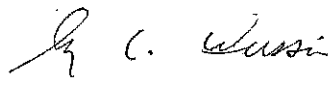
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on February 2, 2015.

It is so ORDERED on January 2, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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PROPOSED DECISION

This matter was heard before Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 2, 2014, in San Diego, California.

Karen L. Gordon, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Yvette Medina (respondent) was present and was represented by Edward O. Lear, Attorney at Law.

The record was held open to allow respondent to submit additional evidence. The additional evidence was received on October 31, 2014, and marked as Exhibit H and admitted. The record was closed, and the matter was submitted for decision on October 31, 2014.

FACTUAL FINDINGS

1. On December 1, 2008, the Board issued Pharmacy Technician Registration Number TCH 86170 (registration) to respondent. Respondent's registration was in full force and effect at all times relevant to the allegations set forth in the Accusation, and expires on June 17, 2016, unless renewed. Complainant seeks to discipline respondent's registration based upon allegations of illegal possession of a controlled substance and a criminal conviction, constituting unprofessional conduct, as described below.

Illegal Possession of a Controlled Substance

2. On February 8, 2012, at approximately 12:30 a.m., officers with the La Habra Police Department initiated a routine traffic stop of a vehicle with tinted windows. Upon contact with respondent, who was driving, officers smelled a strong odor of marijuana coming from inside the vehicle. An officer asked respondent if she had any illegal items on her person or inside her vehicle. Respondent stated that she had a small amount of marijuana in the center console area. Respondent consented to a search of her vehicle. Officers located a clear tube container with a lid and inside the container was a green leafy substance consistent with marijuana. Officers located a black purse in the rear passenger seat and located a clear plastic baggie which contained a substance the officers recognized to be consistent with cocaine. Respondent admitted that the purse was hers, and that she believed the white powder was cocaine. Respondent explained that she was at a bar in Bellflower a couple of days before, and while in the restroom, a female approached her and gave her the baggie of cocaine. The white powder was later tested and confirmed to be cocaine, weighing .33 grams. Respondent was subsequently arrested and charged with possession of a controlled substance, a felony. The criminal charge did not result in a conviction.

February 28, 2013 Conviction

3. On February 28, 2013, in the Superior Court of California, County of Los Angeles, in Case No. 3BF00854, respondent was convicted, upon a plea of guilty, of violating Vehicle Code section 23152, subdivision (b), (driving under the influence (DUI) with a blood alcohol content of .08 percent or more), a misdemeanor. The court suspended sentence, and placed respondent on three years' probation upon the following terms: pay fines and fees of \$1,814; and complete a three-month first offender alcohol program.

4. The circumstances underlying respondent's criminal conviction are that, on December 9, 2012, at approximately 3:00 a.m., a California Highway Patrol (CHP) officer observed a vehicle traveling at a high rate of speed, estimated to be 100 miles per hour. The officer began a high speed pursuit, observing the vehicle in the number one lane. The vehicle crossed the double yellow lines and the driver had difficulty negotiating a curve at such a high rate of speed. The officer initiated a traffic stop and the driver exited the freeway. At the bottom of the off-ramp, the driver stopped in the number two lane approximately 20 feet from the limit line, and appeared to place the car in park. The officer then instructed the driver to turn right onto the exit road.

5. Upon making contact with the driver, the officer immediately detected the odor of alcohol emitting from the vehicle. Respondent was the driver of the vehicle. The officer observed objective signs of alcohol intoxication. Respondent apologized for her speed. When asked how much she had been drinking, respondent stated, "We were watching a fight at a friend's house, and they were drinking." The officer asked respondent again, and she stated that she had a couple of drinks, but it was a couple of hours ago. Another CHP officer arrived and respondent told him that she drank two beers and "shot." The officer administered field sobriety tests, and determined that respondent was under the influence of

alcohol. Respondent was arrested and transported to the sheriff's station for booking. Her blood alcohol content was later determined to be .14/.14.

Evidence of Rehabilitation, Mitigation and Aggravation

6. With regard to her possession of cocaine arrest on February 8, 2012, respondent admitted that she had cocaine and marijuana in her possession. She asserted that she went out with her girlfriend to the clubs, and someone gave her cocaine. She put the cocaine in her purse, and later that evening she was pulled over in her vehicle by law enforcement, and arrested. The criminal matter against her was subsequently dismissed.

7. With regard to her DUI conviction on February 28, 2013, respondent admitted that she went out drinking with friends, her vehicle was subsequently pulled over on the freeway by law enforcement, and she was arrested for DUI. She paid all of her court fines, began attending Alcoholics Anonymous and completed the three-month DUI program.

8. Respondent admitted that she had just turned 21 at the time of her criminal acts, describing herself as a "party girl." She described a party girl as a girl who goes to night clubs to dance and have drinks. She went out on the weekend with her friends, approximately twice a month. She led the party girl lifestyle for two years, until she was arrested and convicted of DUI. When respondent went out on the weekends with her friends, she was offered drugs, and chose to experiment. She admitted that her choices led to bad decisions. Respondent has a daughter who is currently eight years old. She and the father of her child were going through a breakup at the time of her arrests.

9. Respondent's fiancé, the father of her child, gave her an ultimatum to change her behavior and address her alcohol and drug problems. Respondent "recapped everything [she] did with her life and saw what [she] had to do." She realized that she took her family for granted, and now wanted to work to put her family first. She complied with the terms of her probation and enrolled in a therapy program. (Finding 10.)

10. On May 24, 2013, respondent enrolled in the Kaiser Permanente Addiction Medicine Program (Kaiser) in Orange County and completed a two-week outpatient program while she worked. After the two-week outpatient program, she attended individual therapy sessions, approximately once a month or more, from June 14, 2013, to September 3, 2014. Respondent also completed monthly drug screen and urine analyses. As of September 11, 2014, Kaiser reported that respondent complied with her treatment recommendations. Respondent learned from her therapy program, called "cognitive behavior therapy." She learned coping skills by talking in a group setting about her experiences, and that of the others. She learned that people did not have as much family support as she did, and she was "throwing it away." She learned that she wants to be a good example for her daughter.

11. Respondent attends weekly AA meetings and has a temporary sponsor. She submitted proof of attendance at AA meetings from May 2013 to August 2014. Respondent

currently tries to "fit in" AA meetings once a week. She is currently working on the third step of the 12-step program. She does not consider herself to be an alcoholic.

12. On October 14, 2014, petitioned the court for early termination of her criminal probation. On October 30, 2014, the court granted respondent's petition, and issued an Order Granting Relief pursuant to Penal Code section 1203.3, subdivision (a).

13. Steve Dang, a pharmacist at Kaiser Permanente, testified on respondent's behalf. He met respondent when he worked as a pharmacist at RX Two Pharmacy in Orange County. Respondent was Dr. Dang's pharmacy technician there. Dr. Dang observed respondent to be a competent pharmacy technician, and that she was the best pharmacy technician he ever worked with. Dr. Dang worked with respondent for two years. He considers respondent a friend, and he keeps in contact with respondent, even though they no longer work together. Dr. Dang is aware of respondent's cocaine arrest and her DUI conviction. He "would have never guessed that respondent" would conduct herself in this manner because of the way she handled herself. Despite respondent's conduct, Dr. Dang believes respondent has good character and a good work ethic. He stated, "I would stick by her and would put my name behind her."

14. Respondent submitted seven character references which were received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).¹ Dr. Dang, who testified on respondent's behalf, wrote that there was no coworker that he relied on more than respondent. Respondent had an extremely hard work ethic and was reliable. He described respondent as a good mother, a great colleague, and a great friend to have.

Melissa Garcia worked with respondent at RX Two Pharmacy and has known respondent for six years. She and respondent are friends. Ms. Garcia described respondent as a courageous, honest, diligent and hard-working person.

Yvette Hernandez has known respondent for 10 years. She met respondent through her husband, who previously worked with respondent's fiancé. She characterized respondent as a young adult who was influenced by the wrong people while having problems in her life. Ms. Hernandez has knowledge of respondent's cocaine arrest and DUI, and explained that respondent was not in the right state of mind, and most people turn to drugs and alcohol while under stress and depression, which respondent did. Ms. Hernandez stated that respondent is a good friend, mother, wife and worker, and she would never again put her profession in danger.

¹ Government Code section 11513, subdivision (d), provides, in pertinent part, that "[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

Erlinda Menefee has known respondent for over five years as her coworker. She wrote that respondent "stands accused of a very serious charge," but has witnessed respondent mature as a person. Ms. Menefee described respondent as having the most potential in the pharmaceutical field out of all her employees, as a hard and dedicated worker. Ms. Menefee also described respondent as a great friend, a great colleague and a great mother.

Julie Luu knows respondent through Kaiser's Chemical Dependency Program and AA. Ms. Luu is aware of the Board's action against respondent. Ms. Luu described respondent as a hard-working and headstrong woman, who is a great person and friend. Ms. Luu wrote that respondent has managed to turn her life around. Respondent is a caring mother and wants to learn something new every day in her job.

Mayra Ochoa met respondent during Sunday services at church. She described respondent as a loving, caring and generous friend, and an honest and trustworthy employee. Ms. Ochoa asked that the Board forgive respondent for her actions.

Sandra Garcia has known respondent for five years, "in many capacities." Ms. Garcia trained respondent at RX Two Pharmacy. She described respondent as very sharp and good at her job. She wrote that "we are all human and people make mistakes please keep all the facts in mind when making a decision ..."

15. The letter writers speak very highly about respondent as a hard worker, great friend, colleague and mother. They provide some insight into respondent's arrest for cocaine possession and her DUI conviction, as a result of personal problems. The letter writers described respondent as not the type of person that would commit criminal acts. Many of the letters commend respondent's skills as a vocational nurse. Despite respondent's personal problems which led to her drinking and drug use, she was able to separate her personal life from her professional life, where she was regarded as extremely hard-working and competent. The letters are given some weight.

16. Respondent is currently employed at Pharmerica Pharmacy (Pharmerica) in Cypress, California. She has worked there since 2011. Respondent also works at Premier Pharmacy in Brea, California for the past two months. Respondent works a total of 65 hours per week as a pharmacy technician.

Costs

17. Complainant has requested that respondent be ordered to pay the Board's costs for prosecution in the amount of \$4,440. These costs are for the services provided by the Attorney General's office in prosecuting this matter. They are supported by a Certification of Costs and a declaration of the Deputy Attorney General. Attached to the certification is a computer printout of the tasks the Attorney General's office performed, the amount of time spent performing those tasks, and the amounts charged. Respondent did not object to the costs requested by complainant. Complainant established that the requested costs are

reasonable in light of the allegations and issues in this matter. Complainant's request regarding costs is more fully addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Business and Professions Code² section 490 provides in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

2. Section 493 provides:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

3. Section 4022 provides:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in

² All references are to the Business and Professions Code, unless otherwise specified.

with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

4. Section 4060 provides, pertinent in part:

A person shall not possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to Section 4052.1, 4052.2, or 4052.6. This section does not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, if in stock in containers correctly labeled with the name and address of the supplier or producer.

5. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(6), and section 4022.

6. Section 4301, subdivisions (h), (j), (l), and (o) provide in part, that:

The Board shall take action against any holder of a license who is guilty of unprofessional conduct ... Unprofessional conduct shall include, but is not limited to, any of the following:

(h) The administering to oneself, or 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 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, of any other state, or 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.

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or tem 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.

7. California Code of Regulations, title 16, section 1770 provides that, “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.”

Substantial Relationship

8. Respondent’s illegal possession of cocaine, a controlled substance, and her DUI conviction evidence her present or potential unfitness to perform the functions authorized by her registration in a manner consistent with the public health, safety, and welfare. Consequently, they are substantially related to the qualifications, functions and duties of a pharmacy technician.

Causes for Revocation

9. Cause exists to revoke respondent’s license pursuant to section 4301, subdivisions (j) and (o), on the grounds of unprofessional conduct, in that respondent possessed cocaine, a controlled substance, by reason of Finding 2.

10. Cause exists to revoke respondent’s license pursuant to sections 490 and 4301, subdivision (l), on the grounds of unprofessional conduct, in that respondent was convicted of a crime that is substantially related to the qualifications, functions and duties of a pharmacy technician, by reason of Finding 2 and Legal Conclusion 8.

11. Cause exists to revoke respondent’s license pursuant to section 4301, subdivision (h), on the grounds of unprofessional conduct, in that respondent used alcohol to an extent and in a manner that was dangerous to herself and the public, by reason of Findings 4 and 5.

Rehabilitation

12. California Code of Regulations, title 16, section 1769, subdivision (c), sets forth criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

13. In 2013, respondent was convicted of DUI. Her blood alcohol content was .14/.14, almost twice the legal limit. She was observed by the CHP traveling 100 miles per hour, drifting onto the double yellow lines, and having difficulty negotiating a curve. She stopped in the number two lane short of the limit line, and parked. One year prior to her DUI, respondent was arrested and charged with possession of cocaine. The seriousness and recency of respondent's acts raise concerns about whether respondent is able to work as a pharmacy technician without risk to the public health, safety and welfare.

14. At hearing, respondent submitted strong evidence of rehabilitation. She testified in a very direct and candid fashion. She took responsibility for her criminal conduct and demonstrated insight into the factors that lead to her wrongful behavior. She recognized that she was "throwing it away" because of drinking and drugs. She is committed to providing stability for her family, and setting a good example for her daughter. She complied with the conditions of her probation. She enrolled herself in a two-week outpatient program at Kaiser, and attended individual therapy sessions for over one year, which ended several months ago. She subjected herself to monthly drug screen and urine analyses during that time. Respondent was granted early termination of probation after the hearing in this matter. Her colleagues in the pharmacy field spoke highly of her commitment to her work. From the evidence she presented it was apparent that she has made a serious commitment to maintaining her sobriety to ensure that she will not engage in criminal conduct again.

15. As set forth in Findings 6 to 16, and Legal Conclusion 14, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow her to retain her registration on a probationary basis.

Disciplinary Considerations

16. The Board's Disciplinary Guidelines (Rev. 10/2007) set forth categories of violations and recommended penalties. Violations of section 4301, subdivisions (h), (j), (l) and (o), constituting unprofessional conduct, are Category III violations, where the minimum

penalty is revocation stayed, 90 days actual suspension, three years' probation. The maximum penalty is revocation.

17. When all the evidence is considered, the public health, safety and welfare would be adequately protected if respondent is placed on probation for three years under the terms and conditions set forth below.

Costs

18. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

19. As set forth in Finding 17, complainant seeks \$4,440 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. Given respondent's financial inability to pay all these costs at this time, respondent should be permitted to pay them over the term of her probation according to a reasonable payment plan approved by the Board or its designee.

ORDER

Pharmacy technician registration number TCH 86170 issued to respondent Yvette Medina is revoked. The revocation is stayed and respondent is placed on probation for three (3) 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 registration 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 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 this case 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 this case 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 this case 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 she has read the decision in this case 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 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 \$4,440. Respondent shall pay this amount over the term of her probation in accordance with a reasonable payment schedule established by the Board or its designee. 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 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 60 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 60 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 60 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 60 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. 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.

14. Completion of Probation

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

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

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

16. 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 alcohol, 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 she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

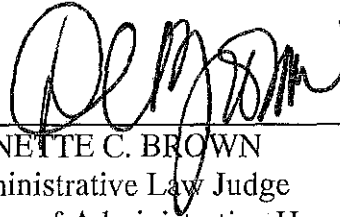
Failure to comply with this suspension shall be considered a violation of probation.

17. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, 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 alcohol,

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.

DATED: December 9, 2014

A handwritten signature in black ink, appearing to read 'Danette C. Brown', is written over a horizontal line.

DANETTE C. BROWN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4439

12 **YVETTE MEDINA**
13 **830 Nashua Street**
14 **La Habra, CA 90631**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 86170**

Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about December 1, 2008, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 86170 to Yvette Medina (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 will expire on April 30, 2014, unless renewed.

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28 ///

1 JURISDICTION

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

5 4. Section 4300(a) of the Code states that "[e]very license issued may be suspended or
6 revoked."

7 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
8 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
9 disciplinary action during the period within which the license may be renewed, restored, reissued
10 or reinstated.

11 STATUTORY PROVISIONS

12 6. Section 4022 of the Code states:

13 "Dangerous drug" or "dangerous device" means any drug or device unsafe
14 for self-use, except veterinary drugs that are labeled as such, and includes the
following:

15 (a) Any drug that bears the legend: "Caution: federal law prohibits
16 dispensing without prescription," "Rx only," or words of similar import.

17 (b) Any device that bears the statement: "Caution: federal law restricts
18 this device to sale by or on the order of a _____," "Rx only," or words of similar
import, the blank to be filled in with the designation of the practitioner licensed to
use or order use of the device.

19 (c) Any other drug or device that by federal or state law can be lawfully
20 dispensed only on prescription or furnished pursuant to Section 4006.

21 7. Section 4060 of the Code states:

22 No person shall possess any controlled substance, except that furnished to a
23 person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or
furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to
24 Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician
assistant pursuant to Section 3502.1. This section shall not apply to the possession
25 of any controlled substance by a manufacturer, wholesaler, pharmacy, physician,
podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or
26 physician assistant, when in stock in containers correctly labeled with the name and
address of the supplier or producer.

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1 8. Section 4301 of the Code states:

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

6

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

9

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

14 (p) Actions or conduct that would have warranted denial of a license.

15 9. Health and Safety Code section 11350 states, in pertinent part:

16 (a) Except as otherwise provided in this division, every person who
17 possesses (1) any controlled substance specified in subdivision (b) or (c), or ...
18 specified in subdivision (b) or (c) of Section 11055 . . . , unless upon the written
19 prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in
20 this state, shall be punished by imprisonment in the state prison.

21 COST RECOVERY

22 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
23 administrative law judge to direct a licensee found to have committed a violation or violations of
24 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
25 enforcement of the case.

26 DRUGS

27 11. Cocaine is a Schedule II controlled substance as designated by Health and Safety
28 Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code
section 4022.

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Illegal Possession of a Controlled Substance – Cocaine – on February 8, 2012)

12. Respondent is subject to disciplinary action under section 4301, subdivisions (j) and (o) of the Code on the grounds of unprofessional conduct, in that she was in possession of the controlled substance and dangerous drug, cocaine, without a prescription in violation of section 4060 of the Code and Health and Safety Code section 11350. The circumstances are as follows:

13. On February 8, 2012, at approximately 12:30 a.m., La Habra Police Department Officers, while on routine patrol, observed a vehicle with tinted windows, in violation of the Vehicle Code, and performed a traffic stop in La Habra, California. When officers contacted the driver (Respondent), officers smelled a strong odor of marijuana emitting from inside the vehicle. Officers asked Respondent if she had any illegal items on her person or in her vehicle, and Respondent told officers she had a small amount of marijuana in the center console area. Respondent consented to a search of her vehicle and officers performed a search for illegal contraband. Officers located a clear tube container with a lid and inside the container was a green leafy substance consistent with marijuana. Officers located a black purse in the rear passenger seat and inside the purse officers located a clear plastic baggie which contained a substance the officers recognized to be consistent with cocaine. Officers asked Respondent who the purse belonged to and Respondent told officers the purse belonged to her and that she believed the white substance was cocaine. Respondent told officers that she had been at a bar in the city of Bellflower a couple of days before and while in the restroom of the bar, a female approached her and gave her the baggie of cocaine. The white power (0.33 grams) was subsequently analyzed and tested positive for cocaine.

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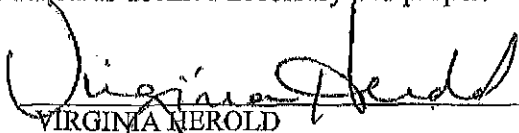
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 86170 issued to Yvette Medina;
2. Ordering Yvette Medina to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/13


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

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