

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

In the Matter of the Petition for Early
Termination of Probation Filed by:

MARTIN MENDIZABAL

Pharmacy Technician License Number
TCH 21295

Petitioner.

Case No. 4449

OAH No. 2017030761

DECISION

This matter was heard before a quorum of the Board of Pharmacy (Board) in Sacramento, California, on March 30, 2017. Marilyn A. Woollard, Administrative Law Judge, Office of Administrative Hearings, presided.

Joshua A. Room, Deputy Attorney General, appeared pursuant to Government Code section 11522.

Petitioner Martin Mendizabal appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on March 30, 2017.

FACTUAL FINDINGS

1. On February 3, 1997, the Board issued California Pharmacy Technician License Number TCH 21295 to petitioner. This license is current through April 30, 2018.

2. Accusation: On March 1, 2014, in Case Number 4449, the Board filed an Accusation against petitioner, seeking to discipline his license under Business and Professions Code sections 490 and 4301, subdivisions (l) (conviction of substantially related crime), (h) (dangerous use of alcohol), and (k) (conviction of crimes involving the consumption of alcohol). The factual basis for the Accusation was petitioner's: (1) May 8,

2012, and May 18, 2006, misdemeanor convictions for violating Vehicle Code section 23152, subdivision (b) (driving while having 0.08 percent or more, by weight, of alcohol in his blood); and (2) his February 19, 2003, misdemeanor conviction for driving under the influence of alcohol. Petitioner's blood alcohol content (BAC) for these convictions measured 0.19, 0.29 and 0.27 percent, respectively. As disciplinary considerations, the Accusation alleged petitioner's two previous misdemeanor convictions: an August 30, 1999 conviction for violating Penal Code section 243, subdivision (battery), and a July 22, 1992 conviction for violating Vehicle Code section 23152, subdivision (b) (BAC unknown). When the Accusation was filed, petitioner was on criminal probation through May 8, 2015. The Board requested an order for petitioner to pay the reasonable costs of its investigation and enforcement.

3. Stipulated Settlement and Decision: On September 26, 2014, petitioner signed a Stipulated Settlement and Disciplinary Order, in which he agreed that the allegations specified in the Accusation constituted cause to discipline his license and he agreed to specific terms of probation.

On October 31, 2014, the Board adopted the Stipulated Settlement and Disciplinary Order as its Decision in Case No. 4449, with an effective date of November 7, 2014. Petitioner's license was revoked, revocation was stayed, and petitioner was placed on probation for four years, subject to terms and conditions that included: (a) reimbursing the Board \$6,110 for the cost of investigation and enforcement; (b) attending substance abuse recovery relapse prevention and support groups twice a week for the first two years of probation; (c) participating in random drug and alcohol testing; (d) abstaining from use of drugs and alcohol; and (e) having a work site monitor. Pursuant to the Decision, petitioner's probation extends through November 7, 2018.

4. Petition for Early Termination of Probation: On December 6, 2016, petitioner filed his Petition for Early Termination (Petition). He provided supporting documentation that included a narrative statement, a CVS job performance review and a 15 year service award; customer appreciation notes, continuing education certificates, and letters of recommendation from three Board licensees and seven private citizens.

PETITIONER'S EVIDENCE

5. Petitioner acknowledges and takes full responsibility for his alcohol-related driving convictions. He is remorseful and thankful that he hurt no one by his conduct. After his most recent conviction, petitioner finally was able to address persistent personal issues, particularly his relationship with his father, which had fueled his lengthy history of excess drinking. Petitioner became sober one year before his license was placed on probation (approximately November 7, 2013), when he began voluntary involvement with Alcoholics Anonymous (AA). Petitioner has regularly attended AA since that time and has complied with his probation requirement regarding the frequency of such attendance. This program has helped him reflect on his behavior and character and to become a better person in general. Petitioner also began the Tony Robbins Self-Help/Personal Achievement programs

to further address his personal issues. Petitioner loves music and is in charge of his AA program's monthly Karaoke Event, which celebrates members' sobriety. He also takes a Mariachi group to the Bel Tooren Villa Convalescent Hospital once or twice a year and participates in charitable activities in the community.

As a condition of his probation, petitioner must call in before 8:00 a.m. on a daily basis to determine if he is required to report for random alcohol testing; he estimated he has made 875 such call-ins up to the time of the hearing. During his first six months of probation, he did not call in by that time on six occasions, but checked in later each day. He had one positive test for an over-the-counter flu medication that contained a substance which triggered a positive test. His use of this medication was documented by his supervisor and work monitor. Since then, petitioner has avoided taking medications for legitimate medical problems out of fear they may cause a positive test. The random testing requirement is very costly and impedes his ability to travel for fear of missing a call-in and order to test that day.

Petitioner has been a pharmacy technician for 20 years. His work reflects his passion to help people. For the past 15 years, he has worked with CVS Pharmacy in Seal Beach, where he is now Lead Technician. As reflected in the letters of recommendation, both CVS management staff and his patients have supported him during his probation. He has complied with the terms of his criminal probation (including fines, jail time, alcohol education and AA meetings) and Board probation. He paid the Board's costs in full within one year of probation, after securing a loan to do so, and he has spent over \$12,000 in alcohol testing costs. He has not had any positive tests for alcohol, which is no longer a part of his life. Petitioner intends to continue his AA fellowship even if his Petition is granted.

6. Recommendations: Petitioner submitted letters of recommendation from three licensed pharmacists, which were verified. In his September 19, 2016 letter, Scott T. Than, Pharm. D., CVS Pharmacy Manager, wrote that petitioner has been an "exemplary" employee. He is reliable, always willing to come in for extra work as needed, very caring of patients and colleagues, and "makes sure that all patients are well take [sic] care of before sending them on their ways." In a second letter dated March 30, 2017, Mr. Than added that, in his opinion, petitioner "is not and never has been a threat to patient safety." Ron Ly, CVS Health Pharmacy District Manager, noted that petitioner has "regretted and learn from" the behavior which led to his probation. In his observation, petitioner "takes great pride" in his work, "is deeply dedicated to taking care of his patients" and "is a great asset in the world of pharmacy . . ." Clara Gilliland, Pharm. D., worked with petitioner for four years as his Pharmacist-in-Charge. She characterized him as an "exceptional employee," who was "highly regarded among patients and frequently requested to assist returning patients." Each licensee fully supports the early termination of petitioner's probation.

Seven patients who worked with petitioner at CVS also submitted letters supporting his Petition and echoing laudatory statements set forth above.¹

¹ The authorship of all these letters but one was verified by the Board.

DISCUSSION

7. With the exception of the full probationary term, petitioner has complied with his probationary requirements. He passed the Pharmacy Technicians Certified Board Exam and paid the Board \$6,110 in costs, as well as the cost of probation monitoring. He has been sober for four years. He fully accepts responsibility for the conduct which resulted in his convictions and his license discipline. For the past three years, petitioner has regularly attended AA meetings and participated in random drug and alcohol screenings. There has never been any issue about his use of controlled substances, and he has had no positive alcohol tests. Although not required, petitioner provided continuing education certifications for 30 hours completed between August 9 and 13, 2016. Petitioner's candid testimony reflected good insight into the reasons he engaged in excessive drinking and a greater understanding of his obligation to act in a manner consistent with public safety. His testimony was strongly corroborated by his CVS supervisors and patients. When all the evidence is considered, the early termination of petitioner's probation is consistent with protection of the public.

LEGAL CONCLUSIONS

1. Petitioner bears the burden of establishing his fitness for early termination of probation and he must do so by clear and convincing evidence. (Evid. Code § 500; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398; *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315.) "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

2. A person whose license has been revoked and who has been placed on probation may petition the Board for modification of penalty after "at least two years for early termination of probation of three years or more." (Bus. & Prof. Code, § 4309, subd. (a)(2).) A petition shall not be considered: (1) while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or (2) while there is an accusation or petition to revoke probation pending against the person. (Bus. & Prof. Code, § 4309, subd. (g).)

3. The petition "shall be accompanied by two or more verified recommendations from holders of licenses" issued by the Board and two or more "recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed." (Bus. & Prof. Code, § 4309, subd. (b).)

4. In considering reinstatement or modification of penalty, the Board may consider factors including, but not limited to, the following: (1) petitioner's activities since the disciplinary action was taken; (2) the offense for which petitioner was disciplined; (3) petitioner's activities during the time the license was in good standing; (4) petitioner's documented rehabilitative efforts; and (5) petitioner's general reputation for truth and professional ability.

5. As set forth in the Factual Findings and Legal Conclusions as a whole, the Petition was filed two years after the imposition of discipline and there is no basis for not considering it on the merits. Petitioner met his burden of establishing that he is sufficiently rehabilitated to warrant the termination of his probation at this time. Legal cause is established to grant the Petition and to fully restore petitioner's license.

ORDER

The Petition for Early Termination of Probation of Pharmacy Technician License Number TCH 21295 is GRANTED.

DATED: JUL 19 2017



AMY GUTIERREZ, Pharm.D.,
President, Board of Pharmacy

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

In the Matter of the Accusation Against:

MARTIN MENDIZABAL
17052 Woodruff Ave.
Bellflower, CA 90706

Pharmacy Technician Registration No.
TCH 21295

Respondent.

Case No. 4449

OAH No. 2014040683

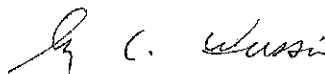
DECISION AND ORDER

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

This decision shall become effective on November 7, 2014.

It is so ORDERED on October 31, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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

10 In the Matter of the Accusation Against:

11 **MARTIN MENDIZABAL**
12 17052 Woodruff Ave.
13 Bellflower, CA 90706

14 **Pharmacy Technician Registration No. TCH**
21295

15 Respondent.

Case No. 4449
OAH No. 2014040683

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Virginia Herold ("Complainant") is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Christine J. Lee, Deputy Attorney
23 General.

24 2. Respondent Martin Mendizabal ("Respondent") is represented in this proceeding by
25 attorney Adam B. Brown of the Law Offices of Brown and Brown, whose address is: 3848
26 Carson Street, Suite 206, Torrance, California 90503.

27 3. On or about February 3, 1997, the Board of Pharmacy issued Pharmacy Technician
28 Registration No. TCH 21295 to Martin Mendizabal (Respondent). The Pharmacy Technician

1 Registration was in full force and effect at all times relevant to the charges brought in Accusation
2 No. 4449 and will expire on April 30, 2016, unless renewed.

3 JURISDICTION

4 4. Accusation No. 4449 was filed before the Board of Pharmacy (Board), Department
5 of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on March 12, 2014.

7 Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 4449 is attached as exhibit A and incorporated herein by
9 reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 4449. Respondent has also carefully read, fully
13 discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary
14 Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
23 every right set forth above.

24 CULPABILITY

25 9. Respondent understands and agrees that the charges and allegations in Accusation
26 No. 4449, if proven at a hearing, constitute cause for imposing discipline upon his pharmacy
27 technician registration. Respondent hereby gives up his right to contest those charges.

28

1 10. For the purpose of resolving the Accusation without the expense and uncertainty of
2 further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual
3 basis for the charges in the Accusation, and that Respondent hereby gives up his right to contest
4 those charges.

5 11. Respondent agrees that his pharmacy technician registration is subject to discipline
6 and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order
7 below.

8 CONTINGENCY

9 12. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
10 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
11 communicate directly with the Board regarding this stipulation and settlement, without notice to
12 or participation by Respondent or his counsel. By signing the stipulation, Respondent
13 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
14 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
15 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
16 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
17 and the Board shall not be disqualified from further action by having considered this matter.

18 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
19 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
20 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

21 14. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
22 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
23 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
24 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
25 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
26 writing executed by an authorized representative of each of the parties.

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28 ///

1 15. In consideration of the foregoing admissions and stipulations, the parties agree that
 2 the Board may, without further notice or formal proceeding, issue and enter the following
 3 Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 21295 issued
 6 to Respondent Martin Mendizabal (Respondent) is revoked. However, the revocation is stayed
 7 and Respondent is placed on probation for four (4) years on the following terms and conditions.

8 **1. Certification Prior to Resuming Work**

9 Respondent shall be automatically suspended from working as a pharmacy technician until
 10 he is certified as defined by Business and Professions Code section 4202(a)(4) and provides
 11 satisfactory proof of certification to the board. Respondent shall not resume working as a
 12 pharmacy technician until notified by the board. Failure to achieve certification within one (1)
 13 year shall be considered a violation of probation. Respondent shall not resume working as a
 14 pharmacy technician until notified by the board.

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

23 Subject to the above restrictions, respondent may continue to own or hold an interest in any
 24 licensed premises by the board in which he holds an interest at the time this decision becomes
 25 effective unless otherwise specified in this order.

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

27 **2. Obey All Laws**

28 Respondent shall obey all state and federal laws and regulations.

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

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

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

14 **3. Report to the Board**

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

23 **4. Interview with the Board**

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

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5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 4449 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, Respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4449 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4449 in advance of the Respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 4449 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his 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

1 employer(s) to submit timely acknowledgements to the board shall be considered a violation of
2 probation.

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

8 **7. Reimbursement of Board Costs**

9 As a condition precedent to successful completion of probation, respondent shall pay to the
10 board its costs of investigation and prosecution in the amount of \$6,110.00. Respondent shall
11 make said payments on a payment plan approved by the board. There shall be no deviation from
12 this schedule absent prior written approval by the board or its designee. Failure to pay costs by
13 the deadline(s) as directed shall be considered a violation of probation.

14 The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to
15 reimburse the board its costs of investigation and prosecution.

16 **8. Probation Monitoring Costs**

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

21 **9. Status of License**

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

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

1 **10. License Surrender While on Probation/Suspension**

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

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

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

18 Respondent shall notify the board in writing within ten (10) days of any change of
19 employment. Said notification shall include the reasons for leaving, the address of the new
20 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
21 shall further notify the board in writing within ten (10) days of a change in name, residence
22 address and mailing address, or phone number.

23 Failure to timely notify the board of any change in employer(s), name(s); address(es), or
24 phone number(s) shall be considered a violation of probation.

25 **12. Tolling of Probation**

26 Except during periods of suspension, respondent shall, at all times while on probation, be
27 employed as a pharmacy technician in California for a minimum of 40 hours per calendar month.
28 Any month during which this minimum is not met shall toll the period of probation, i.e., the

1 period of probation shall be extended by one month for each month during which this minimum is
2 not met. During any such period of tolling of probation, respondent must nonetheless comply
3 with all terms and conditions of probation.

4 Should respondent, regardless of residency, for any reason (including vacation) cease
5 working as a pharmacy technician for a minimum of 40 hours per calendar month in California,
6 respondent must notify the board in writing within ten (10) days of cessation of work and must
7 further notify the board in writing within ten (10) days of the resumption of the work. Any
8 failure to provide such notification(s) shall be considered a violation of probation.

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

12 "Cessation of work" means calendar month during which respondent is not working for at
13 least 40 hours as a pharmacy technician, as defined in Business and Professions Code section
14 4115. "Resumption of work" means any calendar month during which respondent is working as a
15 pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and
16 Professions Code section 4115.

17 **13. Violation of Probation**

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

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

1 extended until the petition to revoke probation or accusation is heard and decided.

2 **14. Completion of Probation**

3 Upon written notice by the board indicating successful completion of probation,
4 Respondent's pharmacy technician registration will be fully restored.

5 **15. No Ownership of Licensed Premises**

6 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
7 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
8 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
9 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
10 days following the effective date of this decision and shall immediately thereafter provide written
11 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
12 documentation thereof shall be considered a violation of probation.

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

21 **16. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

22 Within thirty (30) days of the effective date of this decision, Respondent shall begin regular
23 attendance at a recognized and established substance abuse recovery support group in California,
24 (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board
25 or its designee. Respondent must attend at least two (2) group meetings per week for the first two
26 (2) years of probation unless otherwise directed by the board or its designee. However, if
27 Respondent tests positive for alcohol, narcotics, hypnotics, dangerous drugs or other controlled
28 substances, then Respondent must attend three (3) meetings for the rest of probation. Respondent

1 shall continue regular attendance and submit signed and dated documentation confirming
2 attendance with each quarterly report for the duration of probation. Failure to attend or submit
3 documentation thereof shall be considered a violation of probation.

4 **17. Random Drug Screening**

5 Respondent, at his own expense, shall participate in random testing, including but not
6 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
7 screening program as directed by the board or its designee. Respondent may be required to
8 participate in testing for the entire probation period and the frequency of testing will be
9 determined by the board or its designee. At all times Respondent shall fully cooperate with the
10 board or its designee, and shall, when directed, submit to such tests and samples for the detection
11 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
12 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
13 of probation. Upon request of the board or its designee, Respondent shall provide documentation
14 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
15 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
16 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
17 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
18 shall be considered a violation of probation and shall result in the automatic suspension of work
19 by respondent. Respondent may not resume work as a pharmacy technician until notified by the
20 board in writing.

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

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

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

6 **18. Work Site Monitor**

7 Within ten (10) days of the effective date of this decision, Respondent shall identify a work
8 site monitor, for prior approval by the board, who shall be responsible for supervising Respondent
9 during working hours. Respondent shall be responsible for ensuring that the work site monitor
10 reports in writing to the board quarterly. Should the designated work site monitor determine at
11 any time during the probationary period that respondent has not maintained sobriety, he shall
12 notify the board immediately, either orally or in writing as directed. Should respondent change
13 employment, a new work site monitor must be designated, for prior approval by the board, within
14 ten (10) days of commencing new employment. Failure to identify an acceptable initial or
15 replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be
16 considered a violation of probation.

17 **19. Notification of Departure**

18 Prior to leaving the probationary geographic area designated by the board or its designee for
19 a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in
20 writing of the dates of departure and return. Failure to comply with this provision shall be
21 considered a violation of probation.

22 **20. Abstain from Drugs and Alcohol Use**

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

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

6 ACCEPTANCE

7 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
8 discussed it with my attorney, Adam Brown. I understand the stipulation and the effect it will
9 have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and
10 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
11 Decision and Order of the Board of Pharmacy.

12
13 DATED: 9.26-14 Martin Mendizabal
14 MARTIN MENDIZABAL
Respondent

15 I have read and fully discussed with Respondent Martin Mendizabal the terms and
16 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
17 I approve its form and content.

18
19 DATED: 9/26/14 Adam B
20 ADAM B. BROWN
Attorney for Respondent
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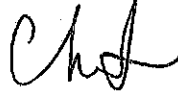
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy.

Dated: 9/26/14

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
ARMANDO ZAMBRANO
Supervising Deputy Attorney General



CHRISTINE J. LEE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 4449

1 KAMALA D. HARRIS
Attorney General of California
2 ARMANDO ZAMBRANO
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3 CHRISTINE J. LEE
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4 State Bar No. 282502
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6 Facsimile: (213) 897-2804

7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

13 **MARTIN MENDIZABAL**
17052 Woodruff Ave.
Bellflower, CA 90706

14 **Pharmacy Technician Registration No. TCH 21295**

15 Respondent.

Case No. 4449

ACCUSATION

16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about February 3, 1997, the Board of Pharmacy issued Pharmacy Technician
21 Registration No. TCH 21295 to Martin Mendizabal (Respondent). The Pharmacy Technician
22 Registration was in full force and effect at all times relevant to the charges brought herein and
23 will expire on April 30, 2014, unless renewed.

24 **JURISDICTION**

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

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

3 7. Section 4300.1 of the Code states:

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

9 8. Section 4301 of the Code states, in pertinent part:

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

13

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

19

20 "(k) The conviction of more than one misdemeanor or any felony involving the use,
21 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
22 combination of those substances.

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

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

12 REGULATORY PROVISIONS

13 9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

20 COST RECOVERY

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

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1 **FIRST CAUSE FOR DISCIPLINE**

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

3 11. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and
4 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
5 that Respondent has been convicted of a crime substantially related to the qualifications,
6 functions or duties of a pharmacy technician.

7 a. On or about May 8, 2012, after pleading nolo contendere, Respondent was convicted
8 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
9 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
10 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2012,
11 No. 2WW00240). The Court sentenced Respondent to serve 120 days in Los Angeles County Jail
12 and placed him on 3 years probation, with terms and conditions.

13 b. The circumstances surrounding the conviction are that on or about July 22, 2011,
14 California Highway Patrol stopped Respondent for a traffic enforcement stop. While speaking to
15 Respondent, the officer detected an odor of an alcoholic beverage emitted from within the vehicle
16 and his person. Respondent was observed to have bloodshot and watery eyes and slurred speech.
17 Respondent admitted that he drank two beers. Respondent submitted to a blood test resulting in a
18 blood-alcohol content level of 0.19%.

19 **SECOND CAUSE FOR DISCIPLINE**

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

21 12. Respondent is subject to disciplinary action under sections 4301, subdivision (I) and
22 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
23 that Respondent has been convicted of a crime substantially related to the qualifications,
24 functions or duties of a pharmacy technician.

25 a. On or about May 18, 2006, after pleading nolo contendere, Respondent was convicted
26 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
27 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
28 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2006,

1 No. 6BF01341). The Court sentenced Respondent to serve 96 hours in Los Angeles County Jail
2 and placed him on 48 months probation, with terms and conditions.

3 b. The circumstances surrounding the conviction are that on or about January 22, 2006,
4 Respondent drove a vehicle while having 0.29% of alcohol in his blood.

5 **THIRD CAUSE FOR DISCIPLINE**

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

7 13. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and
8 490 of the Code, in conjunction with California Code of Regulations, title 16, section 1770, in
9 that Respondent has been convicted of a crime substantially related to the qualifications,
10 functions or duties of a pharmacy technician.

11 a. On or about February 19, 2003, after pleading nolo contendere, Respondent was
12 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
13 [driving under the influence of alcohol or drugs] in the criminal case entitled *The People of the*
14 *State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 2003, No. M886866).
15 The Court placed Respondent on 5 years probation, with terms and conditions.

16 b. The circumstances surrounding the conviction are that on or about January 17, 2003,
17 Respondent drove a vehicle while having 0.27% of alcohol in his blood.

18 **FOURTH CAUSE FOR DISCIPLINE**

19 **(Dangerous Use of Alcohol)**

20 14. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
21 Code in that Respondent used alcoholic beverages to an extent or in a manner dangerous or
22 injurious to himself, another person, or the public. Complainant refers to, and by this reference
23 incorporates, the allegations set forth above in paragraphs 11 through 13, inclusive, as though set
24 forth fully.

25 **FIFTH CAUSE FOR DISCIPLINE**

26 **(Convictions of Crimes Involving the Consumption of Alcohol)**

27 15. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
28 Code, in that Respondent was convicted of crimes involving the consumption of alcohol or drugs.

1 Complainant refers to, and by this reference incorporates, the allegations set forth above in
2 paragraphs 11 through 13, inclusive, as though set forth fully.

3 **DISCIPLINARY CONSIDERATIONS**

4 16. In order to determine the degree of discipline, if any to be imposed on Respondent,
5 Complainant alleges the following:

6 a. On or about August 30, 1999, after pleading nolo contendere, Respondent was
7 convicted of one misdemeanor count of violating Penal Code section 243, subdivision (e)(1)
8 [battery] in the criminal case entitled *The People of the State of California v. Martin Mendizabal*
9 (Super. Ct. Los Angeles County, 1999, No. 9LC02037). The Court sentenced Respondent to
10 serve 4 days in Los Angeles County Jail and placed him on 3 years probation, with terms and
11 conditions.

12 b. On or about July 22, 1992, after pleading nolo contendere, Respondent was convicted
13 of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving
14 while having 0.08% or more, by weight, of alcohol in his blood] in the criminal case entitled *The*
15 *People of the State of California v. Martin Mendizabal* (Super. Ct. Los Angeles County, 1992,
16 No. 92M06771). The Court placed Respondent on 36 months probation, with terms and
17 conditions.

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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 issue a decision:

1. Revoking or suspending Pharmacy Technician Registration No. TCH 21295, issued to Martin Mendizabal;
2. Ordering Martin Mendizabal to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3 of the Code; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 3/1/14 

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

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12/18/13