

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

In the Matter of the Accusation Against:

ALEJANDRA MENDOZA

Pharmacy Technician Registration
No. TCH 86480

Respondent.

Case No. 4795

OAH No. 20140909209

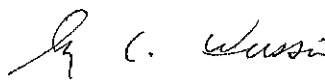
DECISION AND ORDER

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 March 20, 2015.

It is so ORDERED on February 18, 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 came on regularly for hearing on December 8, 2014, before Susan J. Boyle, Administrative Law Judge, Office of Administrative Hearings, in San Bernardino, California.

Desiree Tulleners, Deputy Attorney General, Department of Justice, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Respondent Alejandra Mendoza represented herself.

The matter was submitted on December 8, 2014.

FACTUAL FINDINGS

1. On September 29, 2009, the Board of Pharmacy (board) issued respondent Pharmacy Technician License Number TCH 86480. Respondent's Pharmacy Technician License will expire on March 31, 2015, unless renewed.

2. On May 3, 2014, complainant signed the Accusation in Case No. 4795 in her official capacity as Executive Officer of the board. The Accusation sought to revoke or suspend respondent's technician license based on allegations that respondent committed acts of dishonesty and engaged in unprofessional conduct. The Accusation also sought the recovery of reasonable costs pursuant to Business and Professions Code section 125.3.

3. On May 3, 2014, respondent signed a Notice of Defense, and this hearing was set.

Allegations of Unprofessional Conduct

4. On November 23, 2012, San Bernardino County Sheriffs were dispatched to a residence in response to a claim by the owner that unauthorized persons were residing in her home.¹ The “tenants” implicated respondent and her then boyfriend, now her husband, as perpetrators of a scheme to rent vacant properties to “tenants” for far below market rental value. Sheriff’s deputies served a search warrant to search respondent’s residence. During the search, they found, among other things, a glass pipe containing what they suspected was methamphetamine. The deputies carrying out the search suspected that respondent was under the influence of drugs or alcohol. In response to a question from a deputy, respondent said she had smoked methamphetamine one week earlier. The search also uncovered blank rental agreements, a list of homes in foreclosure, and several items in the garage that were reportedly stolen.

Respondent was arrested and charged with two offenses; receiving stolen property and being under the influence of controlled substances. According to the Sheriff Department’s report, blood was drawn from respondent when she was arrested; however, the results of a blood test were not offered into evidence at the hearing. No evidence was presented at hearing that the glass pipe actually contained methamphetamine or that respondent was under the influence of a drug or alcohol when deputies were searching her home.

5. The department learned of respondent’s arrest and that criminal charges were filed sometime after the incident.

6. All charges filed against respondent were dismissed on March 25, 2013.

7. No witnesses testified at the hearing concerning the “rental scheme” the board alleged respondent conducted, and respondent denied participating in any such scheme.

8. Complainant relied on allegations that respondent was involved in an illegal “rental scheme,” a claim in the deputy’s report that respondent was under the influence of drugs on November 23, 2012, and respondent’s admission to using methamphetamine documented in that report, as grounds to discipline her license based on unprofessional conduct.

¹ The Sheriff Department’s report was received in evidence under *Lake v. Reed* (1997) 16 Cal.4th 448. *Lake v. Reed* held that portions of a law enforcement officer’s report that contain the officer’s observations or a party’s admissions are admissible in an administrative proceeding pursuant to exceptions to the hearsay rule and can support a finding of fact; however, the remaining hearsay statements cannot support a factual finding, even though they may be used to supplement or explain non-hearsay evidence.

Board's Representative

9. Katherine Sill is an Inspector Pharmacist for the board. As an Inspector Pharmacist, Ms. Sill inspects all categories of licensed pharmacies, including wholesale, retail, private and hospital pharmacies. She also investigates and prepares reports of misconduct concerning interns, technicians and pharmacists, particularly those relating to possible diversion and self-administration of drugs. If a pharmacy-related license is placed on probation, Ms. Sill may be assigned as the probation monitor.

10. Ms. Sill testified that, as in respondent's case, the board receives notice when a licensee is arrested. On May 14, 2013, after the case against respondent had been dismissed, Lori Martinez, the Enforcement Analyst assigned to respondent's case, prepared a report that summarized the sheriff department's report. Ms. Martinez did not testify at the hearing, but her report suggested that she interviewed respondent before preparing the report. The only information contained in Ms. Martinez's report that is not in the sheriff's report is that respondent said she was arrested because she was residing in the home the officers searched; she was unaware of what her boyfriend and brother were doing in the house; she was not under the influence of a drug on November 22, 2012; and she claimed she failed a field sobriety tests because she was frightened.

11. Ms. Sill stated that it is the board's obligation to insure that respondent does not present a danger to public safety. The board is concerned that, by virtue of her license², respondent could have access to confidential patient medical and financial information, including social security numbers, home addresses, and credit card numbers. As a pharmacy technician, respondent's job duties would include the ordering, stocking and dispensing of pharmaceuticals. This unfettered access requires that a technician be honest, have respect for the law, possess self-discipline, and not take illegal drugs or drugs that have not been prescribed by a medical professional. Mistakes made by a pharmacy technician can result in mild to major harm to a customer.

Evidence in Mitigation and of Rehabilitation

RESPONDENT'S TESTIMONY

12. Respondent has led a difficult life. She testified that she was in a "rough relationship" with her children's father³. She described her relationship with her current husband, who was her boyfriend at the time of her arrest, as rough in the beginning. She stated that she was involved with the wrong people and her now-husband was abusive – although he was not abusive in front of the children. In November 2012, when the incidents

² Respondent has not obtained employment as a Pharmacy Technician.

³ Respondent's husband is not the father of her children.

leading to her arrest occurred, respondent was in the process of moving out of the home she shared with her then-boyfriend and her brother because the relationship with her boyfriend was not good, and she believed her brother was involved in things with which she did not want to be involved. Respondent claimed she had no knowledge that items found in the garage were stolen and for which her brother and husband were convicted of burglary. Respondent said she did not know the details of what happened that led to the convictions or the extent of her husband's participation.

Following her arrest, respondent's children were removed from her custody by police with their guns drawn. Respondent sincerely stated that she would never again do anything that would put her children through that kind of experience. Respondent attended Narcotics Anonymous, took parenting and domestic violence classes, and submitted to random drug tests to prove to the court that she was improving herself so that her children would be returned to her. Even after respondent's children were returned to her, she continued drug testing, participated in therapy and continued her involvement in community and church activities. County social workers visited respondent's home once a week, and no evidence was presented that the home visits were anything but positive. The County requested progress reports and report cards from respondent's children's schools, and respondent stated that the children were, and are, doing well at school. The domestic violence that once marred respondent's relationship with her husband "does not exist anymore" and her marriage is good.

Respondent was raised as a Catholic but she was a non-believer. She and her family, including her husband, now attend Victory Outreach Church. Respondent hosts Bible study in her home once a week. She and her husband are involved in a ministry in the church called Gods Anointed Now Generation (GANG). GANG works with children eleven years and older who are at-risk, self-abusers, struggling with drug use, or facing problems in their home life. Respondent also participates in a church-based outreach called His Arms Loving Others (HALO) which provides food and holiday activities for 2000 families in Victorville and surrounding communities. HALO provides services to children first and then to other members of the family. Respondent also collects donations for the needy at church and organizes a food drive during the holidays. Respondent participates in a program to provide a safe and alcohol-free place for community members to go for New Year's Eve; the event includes dinner and entertainment.

Respondent testified that she is involved in the administration of the church and is in charge of counting the money donated by church members in offerings or tithes, dividing and distributing the money to the correct accounts, and making sure church members receive the appropriate credit for their contributions. Respondent stated that she and her husband do anything and everything the church requests them to do.

As relates to drug usage, respondent testified that she has used methamphetamine on one occasion in her life, and that was one week before she was arrested. Respondent asserted that she had not used methamphetamine or any other drug the day she was arrested, and the fact that no drug results were admitted in the hearing or referenced in the court reports

supports respondent's claims. Respondent admitted that she made mistakes, but she has taken steps to ensure that the mistakes are not repeated. She stated that there are no illegal drugs in her home, and her husband is also clean.

As relates to having blank rental agreements, respondent claimed that she had them, and used them, only because her brother and his wife and her husband's brother and his stepson were living with them, and she wanted a legal document to enforce the rental payments they were obligated to make to her. She stated that she obtained the rental agreements from an office supply store. She admitted to copying the rental agreements for her brother, but she said she did not know what he intended to do with them.

As relates to the list of addresses found by the police, respondent contended that she did not write the list. Respondent contended that another woman, who had some connection to her brother or someone else in the home, wrote the list. Respondent stated that she asked the police to take the list and compare it to the other woman's handwriting to confirm it was not written by her. She denied any involvement in the rental scheme discussed in the police reports.

13. Respondent has not worked as a pharmacy technician because she has been unable to find employment in a pharmacy. She enjoyed working as a technician during her school training. She was a manager of a 99 Cent Store for six years while she was going to school. From 2012 until November 2014, respondent was unemployed; she began working for an automobile dealership in a part time position one month prior to the hearing. She makes payments towards her student loan debt in the amount of \$100 per month when she is able. Her husband earns \$35,000 per year working at a smog station, and they pay \$1200 per month for rent. Her husband also pays child support for a son. Her children are 10, 11, and 12 years old and live with her and her husband. Respondent's husband's 16 year old child also lives with them. Respondent stated that her family struggles financially but that she has a lot for which she is grateful.

CHARACTER LETTERS

14. Respondent submitted three character letters in support of her defense to the Accusation. By letter dated August 18, 2014, H.C. Brock II, MA, Clinical Therapist 1, Marriage and Family Therapist Intern with the County of San Bernardino's Department of Behavioral Health, wrote that he had been respondent's clinical therapist for "the past year," and could "attest to her outstanding character." Mr. Brock described respondent as "compassionate and kind" and stated that respondent had been sober and transparent during their therapy sessions. Mr. Brock noted that respondent "possess[ed] a great sense of 'right and wrong' and I have observed her making sound judgments/decisions within her daily life in addition to passing strong moral teachings on to her children." Respondent testified that she, her husband, and her children all participated in therapy with Mr. Brock. She referred to Mr. Brock as someone she could call upon if she required help with any family issues. Although the letter does not confirm that Mr. Brock was aware of respondent's arrest and the

circumstances underlying it, it is reasonable to assume that he was aware since respondent testified that the entire family participated in therapy with Mr. Brock.

15. In a letter dated December 5, 2014, Kim Houchens, SSP, from the Victorville office of San Bernardino County's Children and Family Services, wrote that respondent and her children were her clients from January 2013 through February 2014. Ms. Houchens described respondent as "a model client. . . . She was very cooperative and did everything that was asked of her. She participated in all required services and successfully completed and benefitted from them, including random drug testing. [Respondent] did not miss any tests during this time and all of the tests were negative (she tested 2 times per month)." Ms. Houchens noted that respondent's case was closed "with no concerns for future involvement from my department."

Respondent testified that she was required to call in each day to the company administering the random drug testing for Children and Family Services. She was assigned a color, and if she heard her color announced when she called in, she was required to appear for a drug test.

16. By letter dated October 10, 2014, Alex Gonzalez, Pastor of Victory Outreach Church, wrote that respondent began attending church at Victory Outreach in February 2013. He noted that she was actively involved in several aspects of the church, including attending Bible studies, participating in charitable efforts, and that she was a trustee in the administration office of the church. Victory Outreach International, with which Victory Outreach Church is affiliated, was described as "focusing on substance abuse, alcoholism, gang violence, and other life controlling habits with emphasis on restoring the family unit."

Costs

17. The board filed a Certification of Prosecution Costs pursuant to Business and Professions Code section 125.3 seeking recovery of costs of the investigation and prosecution of the instant matter. The board sought costs in the amount of \$2,355.

LEGAL CONCLUSIONS

Disciplinary Guidelines

1. The Board of Pharmacy Disciplinary Guidelines, October 2007 (Guidelines), provide that the board "serves the public by: protecting the health, safety, and welfare of the people of California with integrity and honesty"

2. The Guidelines provide that the following factors should be considered when determining the level of discipline to be imposed in a disciplinary case:

1. Actual or potential harm to the public
2. Actual or potential harm to any consumer
3. Prior disciplinary record, including level of compliance with disciplinary order(s)
4. Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. Number and/or variety of current violations
6. Nature and severity of the act(s), offense(s) or crime(s) under consideration
7. Aggravating evidence
8. Mitigating evidence
9. Rehabilitation evidence
10. Compliance with terms of any criminal sentence, parole, or probation
11. Overall criminal record
12. If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. Time passed since the act(s) or offense(s)
14. Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. Financial benefit to the respondent from the misconduct.

3. The Guidelines document that pharmacy technicians are issued a license based on minimal education, training requirements or certification, and that no examination is required for issuance of the registration. The Guidelines note that pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

Burden of Proof

4. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies; the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. In a proceeding to revoke the license of a Pharmacy Technician, the preponderance of the evidence standard of proof applies.

The phrase “preponderance of evidence” is usually defined in terms of probability of truth, e.g., “such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth” and is “more likely true than not true.” Otherwise stated, a preponderance calls for probability, while clear and convincing proof demands a high probability. (*Utility Consumers’ Action Network v. Public Utilities Commission of the State of California* (2010) 187 Cal.App.4th 688, 698-699.)

Applicable Statutory and Regulatory Provisions

5. Business and Professions Code section 4200 provides, in part, that every license issued by the board may be disciplined by suspension, revocation and/or placing the license on probation.

6. Business and Professions Code section 4301 provides, in part, that the “board shall take action against any holder of a license who is guilty of unprofessional conduct” Unprofessional conduct includes, but is not limited to:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is a felony or misdemeanor or not.

[¶] . . . [¶]

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

[¶] . . . [¶]

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

7. Health and Safety Code section 11550, subdivision (a), prohibits a person from being under the influence of a controlled substance or narcotic drug unless prescribed by a licensed medical health professional.

Evaluation

8. The First Cause for Discipline does not provide a basis to suspend or revoke respondent's Pharmacy Technician License for engaging in unprofessional conduct within the terms of Business and Professions Code sections 4301, subdivision (f). Complainant failed to meet the burden of proving by a preponderance of the evidence that respondent was part of the rental scheme described in the Accusation. Complainant also failed to meet the burden of proof to sustain a finding that respondent was under the influence of a controlled substance. All charges against respondent for receiving stolen goods and being under the influence of a drug were dismissed. Respondent denied she participated in the alleged rental scheme and that she had taken methamphetamine on the day she was arrested. Complainant's contentions to the contrary were speculative and did not satisfy the board's burden of proof.

9. The Second Cause for Discipline provides a basis to revoke respondent's Pharmacy Technician License pursuant to Business and Professions Code sections 4301, subdivision (j), because respondent admitted unlawful drug use on one occasion in November 2013.

Discipline Determination

10. The purpose of an administrative proceeding seeking the revocation or suspension of an occupational license or registration is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

11. The determination of whether respondent's license should be revoked or suspended, and if so what discipline should be imposed, includes an evaluation of the criteria set forth in the board's Guidelines.

Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The amount of evidence of rehabilitation required varies according to the seriousness of the misconduct. The mere expression of remorse does not demonstrate rehabilitation. A truer indication of rehabilitation will be presented if a petitioner can demonstrate by sustained conduct over an extended period of time that he or she is rehabilitated and fit to practice. (*In re Menna* (1995) 11 Cal.4th 975, 987, 991.)

12. The basis for disciplining respondent's license stems from respondent's admission made to deputies in November 2012 and from her candor in the hearing. When

confronted by deputies in 2012, respondent was forthright, and she admitted that she had used methamphetamine a week earlier. Similarly, at the hearing, respondent admitted that she tried methamphetamine on one occasion. Respondent is commended for her honesty and candidness in admitting to her transgression. It is the substance of respondent's admission and acceptance of responsibility that subjects her license to discipline. Respondent's truthfulness concerning her drug use gives credibility to her testimony on other issues.

The evidence supports a finding that respondent has turned her life around. She successfully participated in random drug testing. She and her husband attended therapy, and their marriage is stable. Domestic violence is no longer an issue in respondent's home, and she is very active in many aspects of her church. Respondent holds positions of trust in her church. She was open and honest in the hearing, and her testimony was credible. Respondent's conduct did not injure a consumer, and she has no prior disciplinary history.

13. Pharmacy technicians occupy positions that require trustworthiness, honesty, clear-headedness, and the exercise of impeccable judgment, particularly because pharmacy technicians have access to confidential personal and financial information of consumers and to highly regulated medications and devices. Although respondent has made excellent progress towards rehabilitation, insufficient time has elapsed to find that she has achieved complete rehabilitation, and a period of probation is warranted

Upon consideration of the entirety of the facts and the application of the disciplinary criteria, protection of the public will not be compromised if respondent's license is revoked, revocation is stayed, and respondent's license is placed on a probationary status. This measure of discipline is consistent with the Board's disciplinary guidelines.

Cost Recovery

14. Complainant is seeking recovery of the costs incurred in the investigation and prosecution of the instant matter in the amount of \$2,355.00. *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Bus. & Prof. Code, § 125.3, did not violate due process. But, it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially meritorious claims or defenses from exercising their right to a hearing." The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a "subjective" good faith belief in the merits of his/[her] position; (3) whether the licensee raised a "colorable challenge" to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the cost recovery regulation in *Zuckerman* contains substantially the same language as that is set forth in Business and Professions Code section 125.3.

Respondent achieved a reduction in the severity of the discipline sought to be imposed and raised a colorable challenge to the proposed discipline. Evidence was presented that respondent's financial condition was such that she would be unable to pay the full amount of the costs requested by the board. After applying the *Zuckerman* criteria in the instant matter, it is concluded that it is reasonable to require respondent to pay \$750 of the costs to investigate and enforce the Accusation against her. That amount is reasonable pursuant to Business and Professions Code section 125.3, and respondent must therefore pay the sum of \$750 to the board.

ORDER

Pharmacy Technician Registration No. TCH 86480 issued to respondent Alejandra Mendoza is revoked; however, the revocation is stayed, and respondent is placed on three years' probation on the following terms and conditions.

1. **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, whether state or federal;

the filing of any action for 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.

Respondent's failure to timely report any such occurrence constitutes a violation of probation.

2. 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 of delinquency in the 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.

3. 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.

4. 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.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers where her employment requires a Pharmacy Technician License or the employment is in or relates to a pharmacy of this Decision and of all the terms, conditions and restrictions imposed on respondent by this 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 for which a Pharmacy Technician License is required or the employment is in or relates to a pharmacy, 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 Board Decision in Case Number 4795 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 Board's Decision in Case Number 4359 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause her direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the Board's Decision in Case Number 4359 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.

6. 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 \$750 within the first two years of probation. 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 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.

7. 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.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician license with the Board, including any period of suspension and during any period in which 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.

9. 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.

10. Notification of 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.

11. 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 20 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 20 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 20 hours per month 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 20 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. 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 shall be determined by the Board or its designee. Respondent shall fully cooperate with the Board or its designee at all times 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. Respondent's 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. Respondent's 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 respondent from employment as a registered pharmacy technician. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

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

and devices or controlled substances. Respondent shall not resume work until notified by the Board.

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

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

13. Abstain from Drug Use

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

14. 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.

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15. **Completion of Probation**

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

DATED: January 7, 2015


SUSAN J. BOYLE
Administrative Law Judge
Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 4795

13 **ALEJANDRA MENDOZA**
9030 Chiminey Rock Ave.
Hesperia, CA 92344

A C C U S A T I O N

14 **Pharmacy Technician License No. TCH**
15 **86480**

16 Respondent.

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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 September 29, 2009, the Board of Pharmacy issued Pharmacy
23 Technician License Number TCH 86480 to Alejandra Mendoza (Respondent). The Pharmacy
24 Technician License was in full force and effect at all times relevant to the charges brought herein,
25 and will expire on March 31, 2015, unless renewed.

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1 in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d)
2 or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in
3 Schedule III, IV, or V, except when administered by or under the direction of a person licensed
4 by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of
5 the defense to show that it comes within the exception. Any person convicted of violating this
6 subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90
7 days or more than one year in a county jail. The court may place a person convicted under this
8 subdivision on probation for a period not to exceed five years and, except as provided in
9 subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that
10 the person be confined in a county jail for at least 90 days. Other than as provided by subdivision
11 (c), in no event shall the court have the power to absolve a person who violates this subdivision
12 from the obligation of spending at least 90 days in confinement in a county jail.

13 7. Section 118, subdivision (b), of the Code provides that the
14 suspension/expiration/surrender/cancellation of a license shall not deprive the
15 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
16 within which the license may be renewed, restored, reissued or reinstated.

17 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
18 administrative law judge to direct a licentiate found to have committed a violation or violations of
19 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
20 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
21 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
22 included in a stipulated settlement.

23 BACKGROUND

24 9. Between November 22-23, 2012, San Bernardino Sheriff's deputies were dispatched
25 to a residence after a complaint was filed by a victim claiming that there were unknown people
26 residing in her vacant house. After interviewing the residents, deputies determined that they had
27 "rented" the house from a couple that created a fraudulent rental agreement and provided keys to
28 locks that they had illegally installed in the residence. The residents informed deputies where the

1 couple could be located and advised that they would be willing to identify them. Respondent was
2 subsequently included in a CALPHOTO lineup and positively identified by the residents as one
3 of the participants in the rental scam.

4 10. A search warrant was subsequently executed at Respondent's current residence.
5 Located in her bedroom were several copies of blank rental agreements, along with several papers
6 with hand-written addresses of possible foreclosed, vacant or occupied houses in Hesperia.
7 Deputies also located a glass pipe containing suspected methamphetamine and a loaded hand gun
8 that records indicate had been previously stolen. A search of the garage revealed a large number
9 of appliances, including microwave and wall ovens, three dishwashers, two televisions, as well as
10 numerous other items. No receipts for any of the items could be found.

11 11. During execution of the search warrant, Respondent was interviewed by deputies,
12 during which she displayed symptoms of being under the influence of a controlled stimulant.
13 When asked when was the last time she used any drugs, she admitted that she last smoked one
14 week before out of the same pipe deputies located in her bedroom. After interviewing
15 Respondent, she was arrested and charged with violating Penal Code section 459 (residential
16 burglary), and Penal Code section 496(a) (receiving a known stolen firearm).

17 **FIRST CAUSE FOR DISCIPLINE**

18 *(Unprofessional Conduct – Dishonest Acts)*

19 12. Respondent is subject to disciplinary action under section 4301, subdivision (f) in
20 that, on or around November 22-23, 2012, she committed acts of dishonesty. Complainant refers
21 to, and by this reference incorporates, the allegations set forth above in paragraphs 9-11, as
22 though set forth fully herein.

23 **SECOND CAUSE FOR DISCIPLINE**

24 *(Unprofessional Conduct)*

25 13. Respondent is subject to disciplinary action under section 4301, subdivision (j) in
26 that, she violated Health and Safety Code section 11550(a) through her admitted use of
27 methamphetamine. Complainant refers to, and by this reference incorporates, the allegations set
28 forth above in paragraphs 9-11, as though set forth fully herein.

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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:

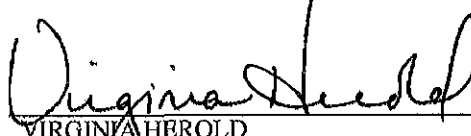
1. Revoking or suspending Pharmacy Technician License Number TCH 86480, issued to Alejandra Mendoza;

2. Ordering Alejandra Mendoza 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; and

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

DATED:

5/3/14



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