

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

In the Matter of the Accusation Against:

**BRYAN CARDONA**  
1031 W 102<sup>nd</sup> St. #1  
Los Angeles, CA 90044

Pharmacy Technician Registration No.  
TCH 97508

Respondent.

Case No. 4980

OAH No. 2014070545

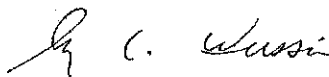
**DECISION AND ORDER**

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

This decision shall become effective on January 5, 2015.

It is so ORDERED on December 4, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By   
\_\_\_\_\_  
STAN C. WEISSER  
Board President

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

In the Matter of the Accusation Against:

BRYAN EDGARDO CARDONA,

Pharmacy Technician Registration No. TCH 97508,

Respondent.

Case No. 4980

OAH No. 2014070545

**PROPOSED DECISION**

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on November 4, 2014, in Los Angeles, California. Complainant was represented by William D. Gardner, Deputy Attorney General. Bryan Edgardo Cardona (Respondent) appeared and represented himself.

Oral and documentary evidence was received, and argument was heard. The record was closed, and the matter was submitted for decision on November 4, 2014.

**FACTUAL FINDINGS**

1. On May 10, 2014, Complainant Virginia K. Herold (Complainant) filed the Accusation while acting in her official capacity as Executive Officer of the California State Board of Pharmacy (Board), Department of Consumer Affairs.
2. Respondent timely filed a Notice of Defense requesting a hearing.
3. On May 27, 2010, the Board issued Pharmacy Technician Registration Number TCH 97508 to Respondent. His Pharmacy Technician Registration is scheduled to expire on December 31, 2015.
4. On August 6, 2013, in the Superior Court of the State of California, County of Los Angeles, Case Number BA407895, Respondent was convicted, on his plea of nolo contendere, of violating Penal Code section 29800, subdivision (a)(1) (possession of a firearm), a felony.
5. Respondent was placed on formal probation for 36 months and ordered to serve one day in jail, with credit for one day served, and to perform 45 days of Cal Trans work or graffiti removal. He was also ordered to refrain from: owning, using or possessing

any dangerous or deadly weapon; remaining in any vehicle or location where any dangerous or deadly weapon is possessed; or remaining in the presence of any armed person.

6(a). The facts and circumstances surrounding the 2013 conviction, as detailed in the police report, are as follows: On the night of February 10, 2013, police officers responded to a call reporting a man with a gun in an alley. When they arrived in the alley, they saw Respondent standing at the trunk of his vehicle. When they approached, they observed Respondent place a black object in the trunk of his vehicle. After Respondent saw the officers approaching, he walked to the front of his vehicle and opened the hood. The officers observed another vehicle parked five feet from Respondent's vehicle with two males opening the hood of that vehicle. The officers detained all three men pending a weapons investigation. When the officers looked into the trunk of Respondent's vehicle, they found a black semi-automatic handgun with six live rounds in the magazine. Respondent told the officers that the gun was not his. Although the two other men in the alley informed the officers that they were helping Respondent jump start the battery of his stalled vehicle, officers did not observe any jumper cables by either vehicle. The gun found in Respondent's trunk was later determined to be stolen.

6(b). At the administrative hearing, Respondent denied that the firearm found in his vehicle belonged to him. He explained that after visiting friends nearby, he was in the alley getting a jump start for his stalled vehicle when the police arrived. Respondent insisted that the object they saw him holding was jumper cables. However, by way of his plea of nolo contendere to, and conviction of, violating Penal Code section 29800, subdivision (a)(1), Respondent is guilty of the crime of felony possession of a firearm. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449 (holding that "[r]egardless of the various motives which may have impelled the plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged").)

7. In determining the degree of discipline, it is noted that prior to issuance of Respondent's pharmacy technician registration, the Board conducted an applicant investigation which revealed Respondent's criminal history as follows:

On June 10, 2005, [Respondent] was convicted of the misdemeanor violation of Penal Code Section 594(a) – Vandalism. He was sentenced to 3 years['] probation, work program, and ordered to pay fines and fees (Superior Court, Los Angeles County Case #3MT1149703).

On June 21, 2006, [Respondent] was convicted of the misdemeanor violation of Vehicle Code Section 23152(b) – Driving Under the Influence of Alcohol or Drugs. He was sentenced to 3 years['] probation, first offender program, and ordered to pay fines and fees (Superior Court, Los Angeles County Case #6MB010801).

On August 4, 2006, [Respondent] was convicted of 3 counts of the felony violation of Penal Code section 594(a) – Vandalism. He was sentenced to 2 years in jail (sentence suspended), 3 years['] formal probation, 120 days in jail, fines and fees (Superior Court, Los Angeles County Case #VA09640201).

On July 8, 2010, [Respondent] was convicted of misdemeanor Vehicle Code section 10852 – Injure and Tamper with a Vehicle: Break and Remove a Part of Vehicle without Consent of the Owner. He was sentenced to 3 years['] probation, 10 days in jail, ordered to not own or possess a firearm, pay fines and fees (Superior Court, Los Angeles County Case #OCA08679).

(Exhibit 4.)

8. Respondent testified at the administrative hearing. His demeanor was professional and respectful. He submitted a written statement wherein he noted that the incident that led to his arrest and 2013 conviction occurred when he was visiting with friends and that it was a day he “regret[ted] so very much and wish[ed he] had not taken part of.” (Exhibit A.) Respondent explained that his two prior vandalism convictions involved his engaging in graffiti. He also explained that his 2010 conviction occurred after he and his friends “got into a fight with a security guard,” the security guard tried to “run [them] over with his patrol vehicle, and the [vehicle] windows ended up being smashed.” (Respondent’s testimony.) Respondent testified that he is “not in a gang” or “a thug with a gun.” He enjoys his job as pharmacy technician and likes working with pharmacy clients.

9(a). Respondent assured the Board that he is in compliance with the terms of his criminal probation.

9(b). Respondent is in the process of completing his community service time, and has completed 35 of the 45 service days. Since he works Monday through Friday, he is trying to schedule his community service on weekends.

9(c). Respondent is making monthly restitution payments (\$100 per month, with current balance of \$2,500) to the criminal probation department. Respondent did not know, nor did the evidence establish, why he is paying the restitution, or if it pertained to his current conviction.

10. Respondent has been working for Demi Rx Pharmacy for five years. He currently works Monday through Friday, from 10:00 a.m. to 6:00 p.m. He has never had any complaints lodged against him regarding his work as a pharmacy technician. Respondent’s most recent employee performance review, dated October 1, 2014, was positive.

11. Respondent has two children whom he supports financially. He pays a total of \$868 per month in child support.

12. Respondent "fell in love with everything that has to do with working at a pharmacy," and if granted continued registration as a pharmacy technician, he plans to re-enroll in community college to work toward becoming a pharmacist. (Exhibit A.)

13(a). Respondent has the support of his Pharmacist-in-Charge, his co-worker and pharmacy customers who submitted letters of reference on his behalf.

13(b). Respondent's Pharmacist-in-Charge, Arev Adanalyan, Pharm. D., described Respondent as follows:

[Respondent] is a very professional, responsible, and kind person. He is always on time, courteous patients and staff, and ready to help. He is a very knowledgeable pharmacy technician and is the one I can always rely on to get the job done. He is trustworthy and has great integrity.

(Exhibit B.)

13(c). One of the pharmacists with whom Respondent has worked for three years, Pankaj Kapadia, wrote:

[Respondent] has been nothing less than a professional, dedicated, positive and hard[-]working Pharmacy Technician. I am looking forward to being a mentor to [Respondent] in his future schooling ventures to become a Licensed Pharmacist in the state of California.

(Exhibit B.)

14(a). Complainant submitted a Certification of Prosecution Costs; Declaration of William D. Gardner, and an attached billing statement documenting that the amount billed to the Board by the Department of Justice, Office of the Attorney General (DOJ) for this case was \$2,550.

14(b). The evidence established that Complainant incurred total costs of \$2,550 in the prosecution of this matter, all of which are reasonable (but see, Legal Conclusion 3 below).

#### LEGAL CONCLUSIONS

1(a). Cause exists to discipline Respondent's pharmacy technician license, pursuant to Business and Professions Code section 4301, subdivision (1), and California Code of Regulations, title 16, section 1770, on the grounds that Respondent has been convicted of a crime which is substantially related to the qualifications, functions and duties of a pharmacy technician, as set forth in Factual Findings 4 through 8, and Legal Conclusion 1(b).

1(b). Respondent's conviction for felony possession of a firearm demonstrates a disregard for the law, and in light of his prior convictions, evidences a pattern of such disregard for the law. In the heavily-regulated field of pharmacy, strict compliance with the law is paramount in pharmacy technicians, who have access to dangerous drugs and controlled substances, are privy to sensitive personal information of pharmacy clients, and have been placed in a position of trust with respect to that access and that information. A disregard for the law evidences a potential unfitness to perform the duties and functions of a pharmacy technician in a manner consistent with the public health, safety and welfare. Consequently, Respondent's conviction is substantially related to the qualifications, functions and duties of a pharmacy technician. (Cal.Code Regs., tit.16, § 1770.)

2. Cause exists to discipline Respondent's pharmacy technician license, pursuant to Business and Professions Code section 4301, on the grounds that Respondent engaged in unprofessional conduct in that he has sustained a substantially-related conviction, as set forth in Factual Findings 5 through 7, and Legal Conclusion 1.

3(a). Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover the reasonable costs of prosecution of this matter, as set forth in Factual Finding 14 and Legal Conclusions 1 and 2.

3(b). However, under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards in a manner which will ensure that the cost award statutes do not deter licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the Board may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Ibid.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment.

3(c). Considering all of the *Zuckerman* factors, there appears to be a basis for reducing the award of Complainant's reasonable costs based on Respondent's economic circumstances, as noted in Factual Findings 9(b) and 11 (monthly payments of \$100 in restitution and \$868 in child support). Respondent's financial status and reduced ability to pay reflects that it would be unduly punitive to require Respondent to pay all the costs in this matter. Accordingly, a 50 percent reduction is appropriate in these circumstances. The reasonable costs of prosecution to be awarded are, therefore, \$1,275.

4(a). Pursuant to California Code of Regulations, title 16, section 1769, subdivision (c):

When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has

been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

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

4(b). Respondent's conviction for possession of a loaded firearm evidences a disregard for the law, particularly in light of the fact that it is his fifth conviction in a span of eight years. This causes concern about continuing to allow Respondent to act in a position of trust as a pharmacy technician. Additionally, Respondent's 2013 crime and conviction are recent, and Respondent is currently serving his 36-month probation. Consequently, there has been no passage of time to assess Respondent's rehabilitation while released from the command of the criminal justice system. (See, *In re Gossage* (2000) 23 Cal.4th 1080.)

4(c). Nevertheless, Respondent has expressed remorse for his conviction, which appeared to stem from his poor choice in the people with whom he is socializing. Respondent is working hard to comply with his criminal probation terms while maintaining full-time employment to support himself and his children. Although he has a history of prior convictions, he was issued his pharmacy technician registration despite his prior convictions, and there was no evidence that he had been admonished or warned that incurring further convictions could result in the revocation of his registration. This current action and discipline should act to provide the realization of the jeopardy in which he has placed his livelihood. Furthermore, Respondent has no complaints against him regarding his pharmacy technician practice, and he has the support of his pharmacist-in-charge and another pharmacist with whom he works. Both support his continued practice and describe him as professional, knowledgeable, and trustworthy.

4(d). Respondent has provided sufficient evidence to indicate the likelihood of his future compliance with any Board-ordered probationary terms, such that revocation of his registration would be unduly harsh and punitive. Given the foregoing, the following order should provide adequate protection of the public health, safety and welfare.

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## ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

Pharmacy Technician Registration Number TCH 97508, issued to Respondent Bryan Edgardo Cardona, is revoked. However, the revocation is stayed for a period of three years, and Respondent is placed on probation under 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 72 hours of such occurrence:

(a). 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;

(b). A plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;

(c). A conviction of any crime;

(d). Discipline, citation, or other administrative action filed by any state or federal agency which involves Respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

### 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 he has complied with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

### 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 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 timely 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, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

#### **5. Reporting of Employment and Notice to Employers**

During the period of probation, Respondent shall provide the Board with written consent authorizing communication with all employers and shall notify all present and prospective employers of the Decision in case number 4980 (OAH Number 2014070545) and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within 30 days of the effective date of this Decision, and within 15 days of undertaking any new employment, Respondent shall report to the Board in writing the name, physical address, and mailing address of all of his employer(s), and the name(s) and telephone number(s) of all of his direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, or other compliance supervisor(s). Respondent shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of Respondent's employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning Respondent's work status, performance, and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking any new employment, Respondent shall cause (a) his direct supervisor, (b) his pharmacist-in-charge, designated representative-in-charge, or other compliance supervisor, and (c) the owner or owner representative of his employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4980 (OAH Number 2014070545), and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be Respondent's responsibility to ensure that these acknowledgement(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, Respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within 15 days of the change acknowledging that he or she has read the decision in case number 4980 (OAH Number 2014070545), and the terms and conditions imposed thereby.

If Respondent works for, or is employed by or through, a pharmacy employment service, Respondent must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board, of the decision in case number 4980 (OAH Number 2014070545), and the terms and conditions imposed thereby in advance of Respondent commencing work at such licensed entity. A record of this notification must be provided to the Board on request.

Furthermore, within 30 days of the effective date of this Decision, and within 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 or she has read the decision in case number 4980 (OAH Number 2014070545) and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that these acknowledgements are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause that/those employer(s) to submit timely written acknowledgments 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, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether Respondent is an employee, independent contractor or volunteer.

#### **6. Notification of Change in Employment, Name, Address, or Phone Number**

Respondent shall notify the Board in writing within 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 10 days of any change in name, residence address, mailing address, or phone number. Failure to timely notify the Board of any change in employer, name, address, or phone number shall be considered a violation of probation.

#### **7. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of prosecution in the amount of \$1,275. Respondent shall be permitted to pay these costs in a payment plan as follows: Beginning the month after the effective date of this Decision, Respondent shall pay \$55 each month for 22 months and one final payment of \$65 for the 23rd installment. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Full payment must be completed no later than one year prior to the end date of probation. Failure to pay costs by the deadlines as directed shall be considered a violation of probation.

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#### **8. Probation Monitoring Costs**

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

#### **9. Status of License**

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

If Respondent's pharmacy technician registration 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 registration shall be subject to all terms and conditions of this probation not previously satisfied.

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

Following the effective date of this decision, should Respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his pharmacy technician registration 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 pharmacy technician registration, 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 his pharmacy technician registration to the Board within 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 years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

#### **11. Current Certification Required**

Respondent shall maintain an active, current certification as defined by Business and Professions Code section 4202, subdivision (a)(4), for the entire period of probation, and shall submit proof of re-certification or renewal of certification to the Board within 10 days of receipt. Failure to maintain active, current certification or to timely submit proof of same shall be considered a violation of probation.

## 12. License Practice Requirement – Tolling

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 80 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 unless Respondent is otherwise notified in writing by the Board or its designee.

If Respondent does not practice as a pharmacy technician in California for a minimum of 80 hours in any calendar month, for any reason (including vacation), Respondent shall notify the Board in writing within 10 days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or decline in practice; and the anticipated date(s) on which Respondent will resume practice at the required level. Respondent shall further notify the Board in writing within 10 days following the calendar month during which Respondent resumes practice as a pharmacy technician in California for a minimum of 80 hours. Any failure to timely 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 36 months.

## 13. Violation of Probation

If 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. 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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**14. Completion of Probation**

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

DATED: November 12, 2014



JULIE CABOS-OWEN  
Administrative Law Judge  
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:  
12 **BRYAN EDGARDO CARDONA**  
1031 W. 102nd Street, #1  
13 Los Angeles, CA 90044  
14 Pharmacy Technician Registration  
No. TCH 97508  
15  
16 Respondent.

Case No. 4980

**A C C U S A T I O N**

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold ("Complainant") brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.  
22 2. On or about May 27, 2010, the Board of Pharmacy ("Board") issued Pharmacy  
23 Technician Registration No. TCH 97508 to Bryan Edgardo Cardona ("Respondent"). The  
24 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on December 31, 2015, unless renewed.

26 **JURISDICTION**

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

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

3           5.     Section 4300.1 states, in pertinent part:

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

9                                   **PERTINENT STATUTES AND REGULATIONS**

10          6.     Section 4301 states, in pertinent part:

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

14                 . . . .

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
3 indictment.

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

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

11 **COST RECOVERY**

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

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 9. Respondent is subject to disciplinary action under sections 4301, subdivision (I), in  
19 conjunction with California Code of Regulations, title 16, section 1770, in that, Respondent was  
20 convicted of a crime which to a substantial degree evidences present or potential unfitness to  
21 perform the functions authorized by his pharmacy technician registration in a manner consistent  
22 with the public health, safety, or welfare. The circumstances are as follows:

23 a. On or about August 6, 2013, in the criminal proceeding entitled *The People of the*  
24 *State of California v. Bryan Cardona* (Super. Ct. Los Angeles County, 2013, No. BA407895),  
25 Respondent entered a plea of nolo contendere and was convicted of one felony count of violating  
26 Penal Code section 29800, subdivision (a)(1) [felon in possession of a firearm].

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28



1 Respondent was sentenced to one day in Los Angeles County Jail and placed on formal probation  
2 for a period of 36 months.

3 b. The circumstances surrounding the conviction are that on or about February 10, 2013,  
4 the Los Angeles Police Department responded to a call about a man with a gun in an alley near  
5 Jefferson Blvd. and 4<sup>th</sup> Avenue in Los Angeles. When the officers arrived on the scene, they  
6 observed Respondent placing what appeared to be a gun in the trunk of a vehicle. Upon opening  
7 the trunk, the officers found a loaded black semi-automatic handgun, which was later determined  
8 to have been stolen. Respondent was arrested and booked for violating Penal Code section 25400,  
9 subdivision (a)(1) [carrying concealed weapon in a vehicle].

10 **SECOND CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct)**

12 10. Respondent is subject to disciplinary action under section 4301 in that Respondent  
13 engaged in unprofessional conduct. Complainant refers to, and by reference incorporates, the  
14 allegations set forth above in paragraph 9, subparagraphs a and b, inclusive, as though set forth  
15 fully herein.

16 **DISCIPLINE CONSIDERATIONS**

17 11. In order to determine the degree of discipline, if any to be imposed on Respondent,  
18 Complainant alleges that:

19 a. On or about July 8, 2010, Respondent was convicted of one misdemeanor count of  
20 violating Vehicle Code section 10852 [tampering with a vehicle] in the criminal proceeding entitled  
21 *The People of the State of California v. Bryan Edgardo Cardona* (Super. Ct. Los Angeles  
22 County, 2010, No. OCA08679). The Court sentenced Respondent to ten (10) days in Los Angeles  
23 County Jail and placed him on 3 years' probation, with terms and conditions.

24 b. On or about August 4, 2006, Respondent was convicted of three felony counts of  
25 violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled  
26 *The People of the State of California v. Bryan Edgardo Cardona* (Super. Ct. Los Angeles  
27 County, 2006, No. VA09640201). The Court sentenced Respondent to two (2) years in jail  
28

1 (sentence suspended) and placed him on probation for a period of 3 years, with terms and  
2 conditions.

3 c. On or about June 21, 2006, Respondent was convicted of one misdemeanor count of  
4 violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by  
5 weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of*  
6 *California v. Bryan Edgardo Cardona* (Super. Ct. Los Angeles County, 2006, No.  
7 6MB0108101). The Court placed Respondent on 3 years' probation, with terms and conditions.

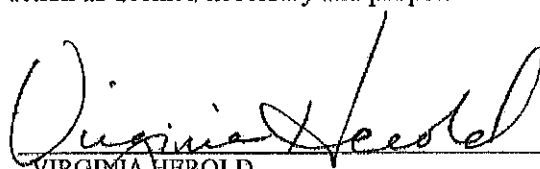
8 d. On or about June 10, 2005, Respondent was convicted of one misdemeanor count of  
9 violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled  
10 *The People of the State of California v. Bryan Edgardo Cardona* (Super. Ct. Los Angeles  
11 County, 2005, No. 4MT1149703). The Court placed Respondent on 3 years' probation, with  
12 terms and conditions.

13 **PRAYER**

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

- 16 1. Revoking or suspending Pharmacy Technician Registration No. TCH 97508, issued to  
17 Bryan Edgardo Cardona;  
18 2. Ordering Bryan Edgardo Cardona to pay the Board the reasonable costs of the  
19 investigation and enforcement of this case, pursuant to section 125.3; and  
20 3. Taking such other and further action as deemed necessary and proper.

21  
22 DATED: 5/10/14

  
23 VIRGINIA HEROLD  
24 Executive Officer  
25 Board of Pharmacy  
26 Department of Consumer Affairs  
27 State of California  
28 Complainant

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