

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

In the Matter of the Accusation Against:

JOHNNY A. CHAGOLLA,

Pharmacy Technician Registration No. TCH
62803,

Respondent.

Case No. 5171

OAH No. 2015040209


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 at 5:00 p.m. on April 6, 2016.

It is so ORDERED on March 7, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Theresa M. Brehl, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 22, 2015, in San Diego, California.

Karen L. Gordon, Deputy Attorney General, Department of Justice, represented complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California.

Johnny A. Chagolla, respondent, represented himself.

The matter was submitted on December 22, 2015.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 18, 2014, complainant signed the accusation.
2. The accusation alleged that respondent, Johnny A. Chagolla, a registered pharmacy technician, (a) administered a controlled substance to himself and used alcohol to the extent or in a manner as to be dangerous to himself or others or to the extent that his use impaired his ability to conduct the practice authorized by his license; (b) violated the statutes regarding controlled substances and dangerous drugs; (c) possessed a controlled substance without a prescription; and (d) engaged in unprofessional conduct.

Respondent's Pharmacy Technician Registration

3. On June 4, 2005, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 62803 to respondent to work as a pharmacy technician. Before obtaining his pharmacy technician registration, respondent attended a pharmacy technician program and received a pharmacy technician certificate.

4. Respondent worked as a pharmacy technician at Loma Linda University Medical Center for approximately eight years, until he was terminated on July 12, 2013, because he violated that employer's drug-free work place policy. After his termination, Loma Linda University Medical Center reported the incident that led to his termination to the Board of Pharmacy.

Respondent's Report Under the Influence of Drugs and Alcohol

5. On July 5, 2013, respondent arrived at work at approximately 12:30 p.m. as scheduled. At approximately 1:45 p.m., the pharmacist in charge observed respondent engaging in behavior that caused the pharmacist in charge to conclude that respondent was impaired and should not be working. Respondent's actions were very slow, his speech was slow and labored, and his eyes appeared glassy. He seemed to require a high level of concentration and effort to perform common, repetitive tasks. Respondent consented to the employer's request that he be tested for drugs, and he submitted a urine sample for testing. The test results indicated that he was under the influence of alcohol. The level of alcohol (blood alcohol content) was 0.27 percent, which is over three times the legal limit to operate a vehicle in the State of California. The test results also indicated the presence of benzodiazepine in his system.

6. Benzodiazepine, also referred to as diazepam or valium, has sedative qualities and is used as a muscle relaxant, preoperative sedative, and seizure medication. A prescription is required for benzodiazepine.

7. Respondent did not have a prescription for any drug that would explain the presence of benzodiazepine in his system. Although respondent admitted that he was under the influence of alcohol and benzodiazepine, he did not explain during the hearing how the benzodiazepine entered his system.¹

8. As part of the board's investigation, the investigator inspected the pharmacy at Loma Linda Medical Center, and reviewed audits of the pharmacy's inventory. The investigator discovered numerous shortages of diazepam tablets, including shortages that

¹ During the board's inspector's investigation, respondent denied diverting drugs for his personal use and told the investigator that someone may have put something in a drink without his knowledge. While respondent admitted during the hearing that benzodiazepine was present in his system, he did not offer any explanation as to the source of the drug or how it was ingested.

occurred during a time when the respondent no longer worked for the pharmacy. Additionally, scheduled III to V controlled substances were not locked but were stored with the non-controlled drug inventory.²

Respondent's Substance Abuse Treatment

9. On July 11, 2013, the day before he was notified of his termination, respondent admitted himself into the Loma Linda Chemical Dependency Unit, where he remained in an inpatient detox program for one week. On July 18, 2013, he was released from the inpatient program and entered a 30-day sober living program. While in the sober living program, he participated in program meetings and activities from 6:00 a.m. until 7:00 p.m. every day. He has abstained from the use of alcohol since he entered the detox program, and he has abstained from using drugs ever since he was released from detox. (While he was in the detox program, he was prescribed valium to minimize the risk of seizures during detoxification.)

10. Respondent began participating in Alcoholics Anonymous (AA) the second day of the inpatient program, and he has continued to participate in AA ever since. After his release from the 30-day sober living program, respondent attended AA meetings approximately three times per week, which he continued to do during the first year of his sobriety. After his one year anniversary of sobriety, he reduced the number of times he attended AA meetings to a weekly men's group meeting that is affiliated with AA. He has continued to attend that meeting weekly. He has an AA sponsor whom he met around the time he completed the 30-day outpatient sober living program. He contacts his sponsor daily. With the help of his sponsor, respondent has completed steps one through eight of the Alcoholics Anonymous twelve-step program. At the time of the hearing, he was working on step nine. He considers July 18, 2013, the date he was released from the inpatient detox program to the outpatient program, to be his first day of sobriety.³ As of the date of the hearing, respondent had been sober for 888 days.

11. Respondent expressed gratitude for the assistance he received to deal with his substance abuse issues. He is grateful that Loma Linda University had programs in place to assist him. Before he submitted to the drug test on July 5, 2013, he did not recognize the seriousness of his problem, even though he had been convicted of driving under the influence in 2012, and had participated in the programs then required by his probation.

² Although the manner in which the controlled substances were stored shows that respondent had access to controlled substances at work, the investigator did not conclude in her report or during her testimony that respondent had diverted the drug found in his system from the pharmacy.

³ He does not consider July 11, 2013, as his first day of sobriety because while he was in the inpatient detox program he was prescribed valium.

12. He sought counselling before the July 5, 2013, incident, due to his emotions related to the breakup of a relationship. He saw a psychiatrist weekly to help him with those issues until his employment and insurance coverage ended. The psychiatrist then made arrangements for him to see a student counselor free of charge, which the respondent did until the student could no longer see him. Rather than make arrangements to switch to another student counselor, respondent ceased the sessions.

13. Respondent has changed the community of people with whom he spends time so that he now associates with persons who share his sober lifestyle.

14. Respondent began a new job working as a pharmacy technician for Target in October of 2013 and was still working for that employer as of the date of the hearing.⁴ That employer has worked with respondent's schedule to allow him to attend his weekly men's meetings.

Reasonable Costs of Investigation and Enforcement

15. Complainant seeks recovery of costs of investigation of \$3,455 and costs of enforcement of \$2,312. The board's investigator, Katherine Sill, executed a declaration that described the tasks performed, the time spent on each task and the hourly rate. The Deputy Attorney General who prosecuted the case executed a declaration regarding the costs of prosecution. Attached to her declaration was a document entitled "Master Time Activity by Professional Type", that identified the tasks performed, the time spent on each task and the hourly rate. The reasonable costs of the investigation and prosecution are \$5,767.

16. Respondent did not object to the requested costs. He has been working full time, and he would be able to pay the costs, although it would be difficult for him to make payment in a single, lump sum.

LEGAL CONCLUSIONS

1. The main purpose of administrative disciplinary proceedings is to protect the public through the prevention of future harm and the improvement and rehabilitation of the licensee. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) It is far more desirable to impose discipline before a licensee harms any patient than after harm has occurred. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 772.)

The Standard and Burden of Proof

2. Complainant bears the burden of proof of establishing that the charges in the accusation are true. (*Martin v. State Personnel Board* (1972) 26 Cal.App.3d 573, 583.)

⁴ CVS purchased Target, and, as a result, respondent's employer technically changed to CVS in December of 2015. However, he has continued to work at the same location.

3. In a disciplinary proceeding, the burden of proof is on respondent to produce positive evidence of rehabilitation. (*Epstein v. California Horse Racing Board* (1963) 222 Cal.App.2d 831, 842-843.)

4. In determining the proper standard of proof to apply in administrative license revocation proceedings, courts have drawn a distinction between professional licenses such as those held by doctors, lawyers, and real estate brokers, on the one hand, and nonprofessional or occupational licenses such as those held by food processors and vehicle salespersons, on the other hand. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies, while in proceedings to revoke nonprofessional or occupational licenses, the preponderance of the evidence standard of proof applies. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453.)

5. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. In contrast, an applicant for a professional license must ordinarily satisfy extensive educational and training requirements and then pass a rigorous state administered competency examination. The sharp distinction between professional licenses and nonprofessional licenses supports a distinction in the standards of proof needed to revoke these two different types of licenses. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

6. Business and Professions Code section 4038 defines a “pharmacy technician” as “an individual who assists a pharmacist in a pharmacy in the performance of his or her pharmacy related duties as specified in section 4115.” Business and Professions Code section 4115 sets forth various tasks a pharmacy technician may perform. For example, subdivision (a) provides “a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” A pharmacy technician license may be issued upon a showing a minimal level of formal education, training, and experience. (Bus. & Prof. Code, §4202, subd. (a).) Therefore, the preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional or occupational license.

7. “Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] The sole focus of the legal definition of “preponderance” in the phrase “preponderance of the evidence” is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314,324-325.) “If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].” (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

Applicable Disciplinary Statutes

8. Business and Professions Code section 4202, subdivision (d), provides that the board may suspend or revoke a pharmacy technician registration on any ground specified in Section 4301.

9. Business and Professions Code section 4301 states:

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

[¶] . . . [¶]

(h) The administering to oneself, 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.

[¶] . . . [¶]

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

10 Business and Profession Code section 4060 provides that no person shall possess any controlled substance without a prescription.

11. Health and Safety Code section 11350, subdivision (a), provides that possession of a controlled substance without a prescription from a physician, dentist, podiatrist or veterinarian licensed to practice in the state is punishable by Penal Code section 1170, subdivision (h).

12. Health and Safety Code section 11170 states that “no person shall prescribe, administer, or furnish a controlled substance for himself.”

13. Benzodiazepine is a Schedule IV controlled substance pursuant to Health and Safety Code section 11057, subdivision (d), and a dangerous drug pursuant to Business and Professions Code section 4022.

Cause Exists to Impose Discipline

14. Cause exists to revoke respondent’s registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (h). Complainant proved by a preponderance of the evidence that on July 5, 2013, respondent engaged in unprofessional conduct by consuming alcohol and benzodiazepine, a controlled substance and dangerous drug, to the extent that he was a danger to himself and others and to the extent that he was impaired in his ability to safely conduct the practice authorized by his license.

15. Cause exists to revoke respondent’s registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (j). Complainant proved by a preponderance of the evidence that on July 5, 2013, respondent engaged in unprofessional conduct by consuming a dangerous drug without a prescription in violation of Business and Professions Code section 4060 and Health and Safety Code sections 11350, subdivision (a), and 11170.

16. Cause exists to revoke respondent’s registration as a pharmacy technician under Business and Professions Code section 4301, subdivision (o). Complainant proved by a preponderance of the evidence that on July 5, 2013, respondent engaged in unprofessional conduct by consuming a dangerous drug in violation of Business and Professions Code section 4060.

17. Cause exists to revoke respondent’s registration as a pharmacy technician under Business and Professions Code section 4301 for the same reasons provided in the preceding three paragraphs, above, because complainant proved by a preponderance of the evidence that on July 5, 2013, respondent engaged in unprofessional conduct in violation of subdivisions (h), (j), and (o) of Business and Professions Code section 4301.

Applicable Law Regarding Rehabilitation

18. When determining whether to discipline a licensee, the board “shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation. . . .” (Bus. & Prof. Code, § 4313.)

19. California Code of Regulations, title 16, section 1769, subdivision (b), sets forth the criteria to be considered by the board when evaluating the rehabilitation of a person and his present eligibility for licensure:

- (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

20. Rehabilitation is a state of mind, and a person who has reformed should be rewarded with the opportunity to serve. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) “While a candid admission of misconduct and a full acknowledgement of wrongdoing may be a necessary step in the process, it is only a first step. In our view, a truer indication of rehabilitation will be presented if petitioner can demonstrate by his sustained conduct over an extended period of time that he is once again fit to practice. . . .” (*In re Conflenti* (1981) 29 Cal.3d 120, 124-125.)

21. When considering an individual’s rehabilitation from substance abuse, consideration must be given to the nature and extent of that abuse and its impact upon the individual. Through continued abstinence, a substance abuser may arrest the deleterious manifestations of the disease. The requisite length of time required to show meaningful and sustained rehabilitation varies from case to case. (*In re Billings* (1990) 50 Cal.3d 358, 367.)

22. Respondent has acknowledged the wrongfulness and severity of his past misconduct. Upon learning the level of alcohol that was in his system on July 5, 2013, he recognized that he did have a serious substance abuse problem. He took immediate and effective steps to address the problem by admitting himself into an inpatient detoxification program, completing a 30-day outpatient sober living program, and continuing to attend Alcoholics Anonymous meetings. He also took steps to spend time with others who share his sober lifestyle in order to maintain his sobriety. He has remained sober for nearly three years. It is, therefore, concluded that respondent has shown meaningful and sustained rehabilitation, although he must continue in his recovery efforts to remain abstinent. He is certainly well into the process of rehabilitation.

The Appropriate Measure of Discipline

23. In considering disciplinary action, the board is required to consider its disciplinary guidelines. (Cal. Code Regs., tit. 16, §1760.) The board's disciplinary guidelines provide that:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

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.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

24. 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. The board's disciplinary guidelines state that the board files cases against pharmacy technicians where the violations involve significant misconduct on the part of the licensee and that the board believes that revocation is typically the appropriate penalty when the grounds for discipline involve significant misconduct.

25. Applying the board's criteria in this matter: (a) The conduct occurred in the course of respondent's job as a registered pharmacy technician; (b) no consumer or member of the public was harmed, although the level of respondent's impairment certainly posed a potential to harm a consumer or the public; (c) respondent has no prior discipline; (d) the conduct was very serious because it involved the consumption of a nonprescribed controlled substance and a large volume of alcohol while working as a pharmacy technician that impaired respondent's ability to the extent that he could have seriously injured himself or others; (e) he has a conviction for driving under the influence that occurred in 2012 before he was issued his registration; (f) the conduct took place over two years ago, which is recent; and (g) respondent placed himself in treatment shortly after the incident. Since then, (h) respondent has remained sober for an extended period of time and has continued to work on his sobriety; (i) respondent's conduct was intentional; and (j) respondent did not engage in the conduct for monetary gain.

26. Although cause exists to revoke respondent's registration, the appropriate discipline under the circumstances is revocation, stayed, with a three year probation that includes terms to monitor respondent's sobriety. Respondent's misconduct was serious. However, he has provided significant evidence of rehabilitation. Respondent has taken responsibility for his misconduct, has obtained treatment for his substance abuse, has maintained his sobriety for an extended period of time, and has continued to work on his sobriety. Respondent is to be commended for learning from his mistakes. There is little doubt that respondent has overcome extreme adversity and has made substantial progress toward rehabilitation. As such, it would not be contrary to the public interest to allow respondent to practice as a pharmacy technician while on probation with appropriate terms and conditions.

Recovery of Costs of Enforcement

27. Business and Professions Code section 125.3 provides in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licensee found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case . . .

[¶] . . . [¶]

(d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a)

28. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 the California Supreme Court dealt with the issue of cost recovery, and noted that because a licensee with limited financial resources might forego a hearing for fear that a board might erroneously sustain the charges and order the licensee to reimburse costs, discretion must be used to ensure that a licensee with a meritorious claim is not deterred from exercising his or her right to a hearing. (*Id.* at p. 44.) The Court determined that five factors should be considered in determining whether a particular licensee should be ordered to pay the reasonable costs of investigation and prosecution under statutes like Business and Professions Code section 125.3: Whether the licensee has been successful at hearing in having charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Ibid.*)

29. Here, respondent engaged in the conduct that is the primary focus of the accusation. Respondent did, however, exhibit a subjective good faith belief in the merits of his position and raised a colorable challenge to the discipline in pursuing a hearing, as he has established his rehabilitation such that the discipline imposed should include a stayed revocation with a probationary license as opposed to an outright revocation. This was not a case in which the agency conducted a disproportionately large investigation and prosecution to prove relatively innocuous misconduct, as the conduct was of a serious nature. Finally, the respondent is working fulltime and has the ability to pay the costs if allowed to do so over time.

30. The request for costs of \$5,767 is reasonable under the circumstances. Cause exists under Business and Professions Code section 125.3 to direct respondent to reimburse

the board its reasonable costs of investigation and enforcement in the amount of \$5,767, to be paid over time according to a payment plan that the board shall establish.

ORDER

Pharmacy Technician Registration Number TCH 62803 issued to respondent, Johnny A. Chagolla, is revoked; however, the revocation is stayed, and respondent is placed on probation for three years upon 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;
- 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 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(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 (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 his 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 of this decision in case number 5171 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, 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 5171, 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 entity licensed by the board of the terms and conditions of the decision in case number 5171 in advance of the respondent commencing work at each licensed entity. 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 or she has read the decision in case number 5171 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 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, relief, 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 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 \$5,767, to be paid over time according to a schedule that the board shall establish. There shall be no deviation from the payment schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline as directed by the board or its designee shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his 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 practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his 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 his 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 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, 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 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.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 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 any calendar month during which respondent is not working for at least 80 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 for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

12. No Ownership of Licensed Premises

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

13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

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

14. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times, respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the

prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent 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 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.

15. Work Site Monitor

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

16. Notification of Departure

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

17. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented 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 is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

18. 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.

19. Completion of Probation

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

DATED: December 30, 2015

DocuSigned by:
Theresa M. Brehl
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THERESA M. BREHL
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 5171

12 **JOHNNY A. CHAGOLLA**
13 **4595 High Street**
Riverside, CA 92507

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **62803**

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about June 14, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 62803 to Johnny A. Chagolla (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and will
26 expire on May 31, 2015, unless renewed.
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JURISDICTION

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

4. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

5. Section 4300, subdivision (a), of the Code provides that every license issued by the Board may be suspended or revoked.

6. Section 4300.1 of the Code states:

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

STATUTORY PROVISIONS

7. Section 4060 of the Code states

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

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

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

6 ...

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

13 ...

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

16

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

22 9. Health & Safety Code section 11350 states:

23 Except as otherwise provided in this division, every person who possesses
24 (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of
25 subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of
26 subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section
27 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled
28 substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon
the written prescription of a physician, dentist, podiatrist, or veterinarian licensed
to practice in this state, shall be punished by imprisonment pursuant to subdivision
(h) of Section 1170 of the Penal Code.

....

10. Health & Safety Code section 11170 states:

No person shall prescribe, administer, or furnish a controlled substance for himself.

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

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

9 COST RECOVERY

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

16 DRUG

17 13. Benzodiazepine is a Schedule IV controlled substance pursuant to Health and Safety
18 Code section 11057(d) and dangerous drug pursuant to Business and Professions Code section
19 4022.

20 FACTUAL ALLEGATIONS

21 14. At all times mentioned herein, Respondent was employed as a pharmacy technician at
22 the Loma Linda University Medical Center Outpatient Pharmacy located in Loma Linda,
23 California.

24 15. On or about July 5, 2013 at approximately 1:45 p.m., Respondent was on duty as a
25 pharmacy technician at the outpatient pharmacy. Respondent was observed to have slow physical
26 actions and speech, his eyes were glassy and he required a high level of concentration to complete
27 basic and repetitive tasks. Respondent was then screened for the presence of drugs and alcohol.

28 16. Respondent tested positive for the presence of alcohol and benzodiazepine in his
system. Respondent did not possess a prescription for the benzodiazepine.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Administration of Controlled Substance or Use of Alcohol to Extent or in Manner as to be
3 Dangerous or Injurious or to Extent Use Impaired Ability to Conduct Practice Safely)

4 17. Respondent is subject to disciplinary action under Code section 4301(h), in that he
5 administered a controlled substance to himself, and used alcohol to the extent or in a manner as to
6 be dangerous or injurious to himself or others or to the extent that his use impaired his ability to
7 conduct with safety the practice authorized by his license, as set forth in paragraphs 14 through 16,
8 which are incorporated herein by reference.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Violations of Drug Laws)

11 18. Respondent is subject to disciplinary action under Code section 4301(j), for
12 violating statutes regulating controlled substances and dangerous drugs, including Health &
13 Safety Code section 11350(a) and 11170, in that he possessed and administered a controlled
14 substance to himself, without a prescription, as set forth in paragraphs 14 through 16, which are
15 incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Violations of Pharmacy Law)

18 19. Respondent is subject to disciplinary action under Code section 4301(o) for
19 violating Pharmacy Law, in that Respondent possessed a controlled substance without a
20 prescription in violation of Code section 4060, as set forth in paragraphs 14 through 16, which are
21 incorporated herein by reference.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct)

24 20. Respondent is subject to disciplinary action under Code section 4301 for
25 unprofessional conduct in that he engaged in the activities described in paragraphs 14 through 16
26 above, which are incorporated herein by reference.

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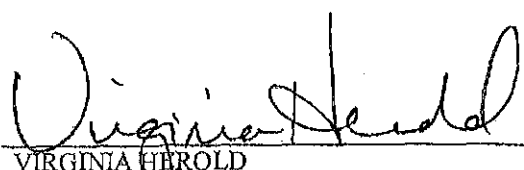
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 62803, issued to Johnny A. Chagolla;
2. Ordering Johnny A. Chagolla to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/3/14



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

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