

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

In the Matter of the Accusation Against:

ENRIQUE RODRIGUEZ,

Pharmacy Technician License
No. TCH 72559

Respondent.

Case No. 5297

OAH No. 2015040063

**DECISION
AFTER REJECTION OF PROPOSED DECISION**

Pursuant to section 11517 of the Government Code, on October 7, 2015, the California State Board of Pharmacy (hereinafter "board") rejected the July 10, 2015, Proposed Decision of the Administrative Law Judge in the above-entitled matter.

On December 2, 2015, the parties were notified that the transcript had been received and the deadline for the parties to submit written argument was set for January 4, 2016. Written argument was received in a timely manner from the complainant. No argument was received from respondent.

The Board, having reviewed and considered the entire record, including the transcript, exhibits and written argument, now issues this decision.

The July 10, 2015, Proposed Decision is adopted as the Board's Decision in this matter with the following modification:

In addition to probation conditions 1 through 16 as set forth in the proposed decision, respondent shall comply with the following additional term and condition of the stayed revocation:

17. 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.

This Decision shall become effective at 5:00 p.m. on April 8, 2016.

It is so ORDERED on March 9, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ENRIQUE RODRIGUEZ

Pharmacy Technician Registration No.
TCH 72559,

Respondent.

Case No. 5297

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TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER SETTING DATE FOR SUBMISSION OF WRITTEN ARGUMENT

The administrative record of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written argument in accordance with the Order Rejecting the Proposed Decision dated October 7, 2015. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: If cause for discipline exists, what penalty, if any, should be applied in this case.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before January 4, 2016. **No new evidence may be submitted.**

IT IS SO ORDERED this 2nd day of December 2015.



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ENRIQUE RODRIGUEZ

Pharmacy Technician Registration No.
TCH 72559,

Respondent.

Case No. 5297

OAH No. 2015040063

ORDER REJECTING PROPOSED DECISION

Pursuant to section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is rejected. The California State Board of Pharmacy (hereinafter "board") will decide the case upon the record, including the transcript(s) of the hearing, and upon such written argument as the parties may wish to submit.

The board is particularly interested in arguments directed to the question whether the discipline should be increased. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

It is so ORDERED on October 7, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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

In the Matter of the Accusation Against:

ENRIQUE RODRIGUEZ,

Pharmacy Technician Registration
No. TCH 72559

Respondent.

Case No. 5297

OAH No. 2015040063

PROPOSED DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on June 22, 2015.

Nicholas P. Tsukamaki, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Enrique Rodriguez represented himself.

The matter was submitted on June 22, 2015.

FACTUAL FINDINGS

1. Complainant Virginia Herold filed the Accusation in her official capacity as Executive Officer of the Board of Pharmacy (Board).

2. On December 4, 2006, the Board issued Original Pharmacy Technician Registration Number TCH 72559 to Enrique Rodriguez (respondent). The registration is in full force and effect until June 30, 2016.

Unprofessional Conduct

3. On April 4, 2014, respondent, together with two other friends, drove to Indio to attend the Coachella Music Festival. All cars entering the festival were stopped and searched for illegal drugs by security guards. A security guard, Alan Wagener, smelled

marijuana in the car, and as a result he asked the car's occupants to place any illegal drugs they brought into an "amnesty" can. Respondent gave the guard five marijuana cigarettes, which were placed in the can.

4. The police report prepared as a result of the encounter, dated April 4, 2014, states that a second guard, Lance Roberts, inquired further of the car's occupants, and they gave him other illegal drugs. Respondent also had approximately 28 methylenedioxymethamphetamine (MDMA) pills, commonly called ecstasy, and four psilocybin mushrooms. Respondent's companion had a baggie containing 3.6 grams of cocaine concealed in a mayonnaise jar. The security guards contacted local law enforcement officers.

5. Respondent was arrested at the festival. The police report states that respondent acknowledged to the arresting officer that the ecstasy and the mushrooms were his. They were not prescribed by a licensed practitioner.

6. Michael Ignacio is a licensed pharmacist and employed by the Board as a pharmacy inspector, and testified at the hearing. He confirmed the drugs found in respondent's possession on April 4, 2014, were controlled substances as defined in Health and Safety Code section 11055. Neither the ecstasy nor the psilocybin mushrooms have a medical use; the ecstasy is chemically related to methamphetamine, a Schedule II drug, which includes the drugs that have highest potential for abuse or dependence.

7. Pharmacy technicians have access to controlled substances while working in pharmacies.

Respondent's Evidence

8. Respondent acknowledged he had the controlled substances in his possession at the music festival and that it was a mistake for him to have them. He also stated "this is the only time that ever happened."

9. Although respondent was arrested for drug possession, he was not convicted of any crime and has no criminal record.

10. Respondent started working as a clerk in a pharmacy in 2003, and in 2006 received his registration as a pharmacy technician. Since then he has worked at various pharmacies, and now works at a mail order pharmacy called AHF Pharmacy in San Francisco. In this capacity he has access to controlled substances.

11. Respondent testified that he has never misused his position as a pharmacy technician, that he takes his job seriously, and that losing his registration would be devastating.

Costs

12. Complainant has requested the respondent be ordered to pay the Board's costs of investigation and enforcement of the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the Board "a sum not to exceed the reasonable costs of the investigation and enforcement of the case" The actual costs of enforcement are \$1,442. These charges are supported by a declaration from the Deputy Attorney General that complies with California Code of Regulations, title 1, section 1042. In the absence of any evidence or argument to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

Unprofessional Conduct: Illegal Possession of a Controlled Substance

1. Business and Professions Code sections 4060 subdivision (a)(3), and section 4301, subdivisions (j) and (o), together with Health and Safety Code section 11250, provide that the Board may discipline a licensee who has violated any state or federal statute regulating controlled substances. Health and Safety Code section 11350 makes it unlawful to possess any Schedule I controlled substance or any Schedule II controlled substance without a prescription. By reason of the matters set for in Findings 3 through 5 cause exists to discipline respondent's registration, because respondent possessed one or more controlled substances without authorization to do so. This conduct constitutes unprofessional conduct.

2. The Board is concerned with its obligation to protect the public and is entitled to the confidence that its registered pharmacy technicians are not violating its licensing requirements or other laws related to the use of controlled substances. As a pharmacy technician, respondent's registration routinely gives him access to sensitive and highly regulated pharmaceuticals, and even in the absence of any criminal prosecution, his possession of the controlled substances must be carefully considered as it relates to the potential for future misconduct. On the other hand, these substances were not obtained in or diverted from any pharmacy. Respondent points out that he has worked continuously in the pharmacy setting since 2003, and he has had his registration since 2006, all without prior discipline. (Finding 10.) Respondent also takes his work seriously, stating that loss of his registration would be "devastating." (Finding 11.) Moreover, there is no evidence of addiction of any kind.

3. In this case, the public will be adequately protected if respondent is placed on probation for a period of four years. The addition of a suspension would do little to further protect the public; however, to insure respondent does not abuse any controlled substance, he will be ordered to abstain from the use of all illegal drugs and he will be subject to random drug testing for the presence of controlled substances, for a period of time satisfactory to the Board. These additional probationary conditions will provide assurance that no controlled substance will be diverted or abused.

4. Complainant requests reimbursement of costs in the amount of \$1,442, pursuant to Business and Profession Code section 125.3. The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 432, sets forth certain standards by which a licensing Board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. No *Zuckerman* factors were presented that would warrant a reduction in the Board's costs.

ORDER

Pharmacy technician registration number TCH 72559, is revoked; however, the revocation is stayed and respondent is placed on probation for four years upon the following terms and conditions.

1. Certification Prior to Resuming Work

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

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

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which 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.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- 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; and,
- d) discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's 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.

3. Report to the Board

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

4. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear at two

(2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 2015040063 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 2015040063 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 2015040063 in advance of respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the decision in case number 2015040063 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 or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,442. Respondent shall make said payments in 36 equal monthly installments of \$40.05. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

8. Probation Monitoring Costs

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

9. Status of License

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

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

10. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work

due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of 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, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

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

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

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

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 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 40 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to

provide such notification(s) shall be considered a violation of probation.

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

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

13. Violation of Probation

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

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

14. Abstain from Drug Use

Respondent shall completely abstain from the possession or use of controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented 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 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 of controlled substances, or their associated paraphernalia not supported by the

documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

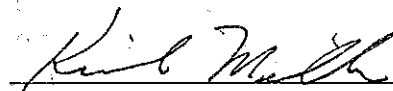
15. Random Drug Screening

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, 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 respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

16. Completion of Probation

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

DATED: July 10, 2015



KIRK E. MILLER

Administrative Law Judge

Office of Administrative Hearings

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

10
11 In the Matter of the Accusation Against:

Case No. 5297

12 **ENRIQUE RODRIGUEZ**
13 **1737 Via Lacqua**
San Lorenzo, CA 94580

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **72559**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.
22 2. On or about December 4, 2006, the Board issued Pharmacy Technician Registration
23 Number TCH 72559 to Enrique Rodriguez (Respondent). The Pharmacy Technician Registration
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 June 30, 2016, unless renewed.

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1 **JURISDICTION**

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

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

8 5. Section 4300.1 of the Code states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 4060 of the Code provides, in relevant part:

16 "No person shall possess any controlled substance, except that furnished to a person upon
17 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
18 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
19 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
20 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
21 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
22 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
23 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
24 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
25 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
26 labeled with the name and address of the supplier or producer.

27 ..."

28 ///

1 7. Section 4301 of the Code provides, in relevant part:

2 "The board shall take action against any holder of a license who is guilty of unprofessional
3 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

4 Unprofessional conduct shall include, but is not limited to, any of the following:

5 ...

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

8 ...

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

13 ..."

14 8. Health and Safety Code section 11350, in pertinent part, makes it unlawful to possess
15 any controlled substance listed in Schedule II (Health and Safety Code section 11055),
16 subdivision (b) or (c), or any narcotic drug in Schedules III-V, absent a valid prescription.

17 9. Marijuana is a Schedule I controlled substance as designated by Health and Safety
18 Code section 11054, subdivision (d)(13), and a dangerous drug as designated by Business and
19 Professions Code section 4022. It is a hallucinogenic drug.

20 10. Psilocybin is a Schedule I controlled substance as designated by Health and Safety
21 Code section 11054, subdivision (d)(18), and a dangerous drug as designated by Business and
22 Professions Code section 4022. It is a hallucinogenic drug.

23 11. Methamphetamine is a Schedule II controlled substance as designated by Health and
24 Safety Code section 11055, subdivision (d)(2) and a dangerous drug as designated by Business
25 and Professions Code section 4022. It is a stimulant drug.

26 **COSTS**

27 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
28 administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 **FACTUAL BACKGROUND**

6 13. On or about April 10, 2014, the vehicle in which Respondent was traveling was
7 stopped and searched at a music festival in Indio, California. Security guards working for the
8 music festival discovered various drugs in the vehicle, including marijuana, approximately four
9 (4) psilocybin mushrooms, and approximately twenty-eight (28)
10 methylenedioxymethamphetamine (MDMA) pills, also known as ecstasy. While at the scene,
11 Respondent told an officer with the Riverside County Sheriff's Office that the marijuana,
12 psilocybin mushrooms, and MDMA pills belonged to Respondent.

13 **CAUSE FOR DISCIPLINE**

14 **(Illegal Possession of Controlled Substances)**

15 14. Respondent is subject to disciplinary action under section 4301, subdivisions (j)
16 and/or (o) and/or section 4060 of the Code, and/or Health and Safety Code section 11350, in that
17 Respondent possessed controlled substances without a prescription. The circumstances of
18 Respondent's conduct are set forth above in paragraph 13.

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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 72559 issued to Enrique Rodriguez;
2. Ordering Enrique Rodriguez 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: 2/23/15 

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

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