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

11 In the Matter of the Petition to Revoke  
12 Probation Against:

Case No. 5329

13  
14 **ANGEL E. ORELLANA**  
15 **754 Delta Street**  
16 **San Francisco, CA 94134**  
17 **Pharmacy Technician Registration No. TCH**  
18 **59395**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

17 Respondent.

18  
19 FINDINGS OF FACT

20 1. On or about November 14, 2014, Complainant Virginia Herold, in her official  
21 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs,  
22 filed Petition to Revoke Probation No. 5329 against Angel E. Orellana (Respondent) before the  
23 Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

24 2. On or about October 22, 2004, the Board of Pharmacy (Board) issued Pharmacy  
25 Technician Registration No. TCH 59395 to Respondent. The Pharmacy Technician Registration  
26 was in full force and effect at all times relevant to the charges brought in Petition to Revoke  
27 Probation No. 5329 and will expire on May 31, 2016, unless renewed.

1           3.     On or about November 21, 2014, Respondent was served by Certified and First Class  
2 Mail copies of the Petition to Revoke Probation No. 5329, Statement to Respondent, Notice of  
3 Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5,  
4 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and  
5 Professions Code section 4100, is required to be reported and maintained with the Board.

6 Respondent's address of record was and is:

7 754 Delta Street  
8 San Francisco, CA 94134.

9           4.     Service of the Petition to Revoke Probation was effective as a matter of law under the  
10 provisions of Government Code section 11505, subdivision (c) and/or Business & Professions  
11 Code section 124.

12           5.     Government Code section 11506 states, in pertinent part:

13                 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
15 of the accusation not expressly admitted. Failure to file a notice of defense shall  
16 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
17 may nevertheless grant a hearing.

18           6.     Respondent failed to file a Notice of Defense within 15 days after service upon him  
19 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of  
20 Petition to Revoke Probation No. 5329.

21           7.     California Government Code section 11520 states, in pertinent part:

22                 (a) If the respondent either fails to file a notice of defense or to appear at the  
23 hearing, the agency may take action based upon the respondent's express admissions  
24 or upon other evidence and affidavits may be used as evidence without any notice to  
25 respondent.

26           8.     Pursuant to its authority under Government Code section 11520, the Board finds  
27 Respondent is in default. The Board will take action without further hearing and, based on the  
28 relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as  
taking official notice of all the investigatory reports, exhibits and statements contained therein on  
file at the Board's offices regarding the allegations contained in Petition to Revoke Probation No.

5329, finds that the charges and allegations in Petition to Revoke Probation No. 5329, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$1867.50 as of February 25, 2015.

#### DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Angel E. Orellana has subjected his Pharmacy Technician Registration No. TCH 59395 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations of Business and Professions Code section 4300, subdivisions (a) and (d), alleged in the Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

- a. Failure to submit quarterly reports;
- b. Failure to participate in random drug testing;
- c. Failure to pay cost recovery; and
- d. Failure to notify the Board of change of employment.

#### ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 59395, heretofore issued to Respondent Angel E. Orellana, is revoked.

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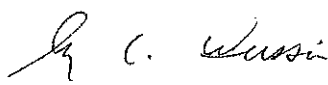
1 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
2 written motion requesting that the Decision be vacated and stating the grounds relied on within  
3 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
4 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

5 This decision shall become effective on April 24, 2015.

6 It is so ORDERED on March 25, 2015.

7 BOARD OF PHARMACY  
8 DEPARTMENT OF CONSUMER AFFAIRS  
9 STATE OF CALIFORNIA

10  
11 By

  
\_\_\_\_\_  
12 STAN C. WEISSER  
13 Board President

14  
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16 Attachment:  
17 Exhibit A: Petition to Revoke Probation  
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# Exhibit A

Petition to Revoke Probation

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SUSANA A. GONZALES  
Deputy Attorney General  
4 State Bar No. 253027  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2221  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

10  
11 In the Matter of the Petition to Revoke  
Probation Against,

Case No. 5329

12 **ANGEL E. ORELLANA**  
13 **754 Delta Street**  
14 **San Francisco, CA 94134**

PETITION TO REVOKE PROBATION.

15 **Pharmacy Technician Registration No. TCH**  
**59395**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold ("Complainant") brings this Petition to Revoke Probation solely in  
21 her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer  
22 Affairs.

23 2. On or about October 22, 2004, the Board of Pharmacy issued Pharmacy Technician  
24 Registration Number TCH 59395 to Angel E. Orellana ("Respondent"). The Pharmacy  
25 Technician Registration was in effect at all times relevant to the charges brought in this Petition to  
26 Revoke Probation and will expire on May 31, 2016, unless renewed.

27 ///  
28

3. In a disciplinary action entitled "*In the Matter of Accusation Against Angel E. Orellana, also known as Angel Ernesto Orellana*," Case No. 4500, the Board of Pharmacy issued a Decision, effective April 14, 2014, in which Respondent's Pharmacy Technician Registration was revoked. However, the revocation was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

## JURISDICTION

4. This Petition to Revoke Probation 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 unless otherwise indicated.

## STATUTORY PROVISIONS

5. Section 4300 of the Code states:

“(a) Every license issued may be suspended or revoked.

• • •

“(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.”

FIRST CAUSE TO REVOKE PROBATION

(Failure to Submit Quarterly Reports)

6. At all times after the effective date of Respondent's probation, Condition 3 stated:

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.

1           7. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition 3, referenced above. The facts and circumstances regarding this violation are  
3 that Respondent failed to submit his July quarterly report, which was due on July 10, 2014.

4                           SECOND CAUSE TO REVOKE PROBATION  
5                           (Failure to Participate in Random Drug Testing)

6           8. At all times after the effective date of Respondent's probation, Condition 8 stated:

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

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

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

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



1           9. Respondent's probation is subject to revocation because he failed to comply with  
2 Probation Condition 8, referenced above. The facts and circumstances regarding this violation are  
3 that as of September 15, 2014, Respondent missed 13 scheduled drug screenings and failed to  
4 check in with FirstLab 85 times.

5                           THIRD CAUSE TO REVOKE PROBATION

6                                   (Failure to Pay Cost Recovery)

7           10. At all times after the effective date of Respondent's probation, Condition 9 stated:

8                       As a condition precedent to successful completion of probation, respondent shall pay  
9 to the board its costs of investigation and prosecution in the amount of \$3,215. Respondent  
shall make said payments on a schedule directed by the board or its designee.

10                   There shall be no deviation from this schedule absent prior written approval by the  
11 board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered  
a violation of probation.

12                   The filing of bankruptcy by respondent shall not relieve respondent of his or her  
13 responsibility to reimburse the board its costs of investigation and prosecution.

14           11. Respondent's probation is subject to revocation because he failed to comply with  
15 Probation Condition 9, referenced above. The facts and circumstances regarding this violation are  
16 that Respondent failed to make his required cost recovery payments to the Board in July 2014,  
17 August 2014, and September 2014.

18                           FOURTH CAUSE TO REVOKE PROBATION

19                                   (Failure to Notify Board of Change of Employment)

20           12. At all times after the effective date of Respondent's probation, Condition 13 stated:

21                   Respondent shall notify the board in writing within 10 days of any change of  
22 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.  
23 Respondent shall further notify the board in writing within 10 days of a change in name,  
residence address and mailing address, or phone number.

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

26           13. Respondent's probation is subject to revocation because he failed to comply with  
27 Probation Condition 13, referenced above. The facts and circumstances regarding this violation  
28 are that on or about July 25, 2014, a Board inspector went to Respondent's employer to perform a

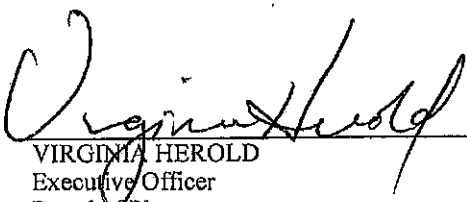
1 quarterly inspection. During the inspector's visit, Respondent's employer advised that  
2 Respondent had been terminated from his employment on July 1, 2014. Respondent failed to  
3 notify the Board of his termination.

4 PRAYER

5 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
6 Petition to Revoke Probation, and that following the hearing, the Board of Pharmacy issue a  
7 decision:

- 8 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4500  
9 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician  
10 Registration No. TCH 59395 issued to Angel E. Orellana;  
11 2. Revoking or suspending Pharmacy Technician Registration No. TCH 59395, issued to  
12 Angel E. Orellana;  
13 3. Taking such other and further action as deemed necessary and proper.

14  
15 DATED: 11/14/14

  
16 VIRGINIA HEROLD  
17 Executive Officer  
18 Board of Pharmacy  
19 Department of Consumer Affairs  
20 State of California  
21 Complainant

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## **Exhibit A**

**Decision and Order  
Board of Pharmacy Case No. 4500**

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

In the Matter of the Accusation Against:

**ANGEL E. ORELLANA, also known as  
ANGEL ERNESTO ORELLANA**

Pharmacy Technician Registration No.  
TCH 59395

Respondent.

Case No. 4500

OAH No. 2013041143

**DECISION AND ORDER**

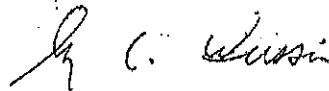
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on October 25, 2013.

It is so ORDERED on September 25, 2013.

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:

ANGEL E. ORELLANA , also known as  
ANGEL ERNESTO ORELLANA

Pharmacy Technician Registration No.  
TCH 59395,

Respondent.

Case No. 4500

OAH No. 2013041143

**PROPOSED DECISION**

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter on July 15, 2013, in Oakland, California.

Deputy Attorney General Susana A. Gonzales represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Angel Ernesto Orellana was present and was self-represented.

The record closed and the matter was submitted for decision on July 15, 2013.

**FACTUAL FINDINGS**

1. On October 22, 2004, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 59395 to respondent Angel E. Orellana, who is also known as Angel Ernesto Orellana. The registration was in full force and effect during all times relevant to this proceeding. It will expire, if not renewed, on May 31, 2014.

*Criminal Conviction*

2. On May 22, 2012, respondent was convicted in the Superior Court of California, County of San Francisco, on his plea of nolo contendere to a violation of Vehicle Code section 23103, reckless driving, a misdemeanor. Respondent was placed on informal probation for 18 months, on terms and conditions that included completion of a First Offender's Program, and payment of fines, fees and assessments.

cocaine, he was carrying it for someone else, but he had considered using it later that evening. Respondent has never actually used cocaine.

9. Through his diversion program, respondent attended weekly group therapy sessions one-a-week for 25 weeks, and he was subject to random drug testing. Respondent successfully completed the diversion program February 13, 2013.

As part of his criminal sentence, respondent was required to attend a three-month First Offender Program for driving under the influence, which he completed December 1, 2012.

Through attendance at these court-ordered programs and classes, respondent addressed the stress he was feeling from his personal situation and "got it off [his] chest." He observed people who had it worse than he, and saw people relapse, which he did not do.

10. Respondent independently attended four sessions of one-on-one therapy in which he also worked on his personal issues and dealing with stress.

11. Respondent has a much more stable and nonconfrontational relationship with the mother of his children. He was awarded joint custody of his two children in December 2012.

12. Respondent's arrest and conviction helped to "wake [him] up" and realize that by his conduct he was jeopardizing a career that he had worked hard to obtain. He also realized that his conduct made his stress worse, rather than better. The conviction and diversion were expensive lessons for him. He knows that he has to "step it up" and not make matters worse.

13. Respondent has been licensed as pharmacy technician since 2004. He started his career at Crescent Home Care Infusion, after which he worked for a Walgreens pharmacy in San Francisco (located at 18th and Mission) for about two and one-half years. Respondent has been employed by Abbotts' Compounding Pharmacy, Inc., since March 2007. Pharmacist John Garcia is president of the company. In a letter dated June 12, 2013, Garcia attests to respondent's good character, and to his professionalism and good judgment at work. Garcia considers respondent a "very important and valued" employee.

14. This is respondent's first disciplinary action with the Board.

#### *Costs*

15. Complainant seeks to recover from respondent the costs of investigation and prosecution of this matter pursuant to Business and Profession Code section 125.3. The board has incurred \$3,215 in charges from the Department of Justice, representing 17.5 hours of attorney time, and two hours of paralegal time. Complainant submitted a declaration from the assigned deputy attorney general listing in general the tasks she performed and the time

personal growth, as a result of it. Respondent has worked in the industry for over eight years without incident. While there is no question that the conduct is substantially related to the licensed activity, the evidence also establishes that it is unlikely that he will engage in similar unprofessional conduct in the future. Placing respondent on probation to the board will be yet another reminder for him of the need to stay committed to his profession, his professionalism, and the need to continue to "step it up" and be mindful that his personal actions outside of his employment can jeopardize his licensure with the board. In consideration of the above, it is concluded that it would not be against the public interest to allow respondent to retain a pharmacy technician registration license on a probationary basis with standard terms and condition of probation.

5. Business and Professions Code section 125, subdivision (a), authorizes the administrative law judge to order a licensee found to have violated a licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case. By reason of the matters set forth in Factual Finding 15, it is determined that the costs of \$3,215 incurred by the agency in the investigation and enforcement of this matter are reasonable.

As instructed by the California Supreme Court in *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the board must exercise its discretion to reduce or eliminate cost awards to ensure that it does not deter licensees with potentially meritorious claims from exercising their right to an administrative hearing. Each of the factors set forth in *Zuckerman* has been considered. There is no basis for reduction of the costs in this matter.

### ORDER

Pharmacy technician registration number TCH 59395 issued to respondent Angel E. Orellana is revoked; however, the revocation is stayed, and respondent is placed on probation for a period of three years upon the following terms and conditions:

#### 1. Obey All Laws

Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

Respondent shall report any of the following occurrences to the board within 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

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 the decision in case number 4500 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 4500, and 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.

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 4500 in advance of 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 4500 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 acknowledgments to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall



**9. License Surrender While on Probation**

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 pocket and wall 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, including any outstanding costs.

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

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, supervisor or owner, and the work schedule, if known. Respondent shall further notify the board in writing within 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 pharmacist 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

**13. Completion of Probation**

Upon successful completion of probation, respondent's pharmacy technician registration will be fully restored.

DATED: August 9, 2013



MELISSA G. CROWELL  
Administrative Law Judge  
Office of Administrative Hearings

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 SUSANA A. GONZALES  
Deputy Attorney General  
4 State Bar No. 253027  
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Oakland, CA 94612-0550  
6 Telephone: (510) 622-2221  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4500

12 **ANGEL E. ORELLANA, a.k.a. ANGEL**  
13 **ERNESTO ORELLANA**  
14 **60 Teddy Avenue**  
**San Francisco, CA 94134**

**ACCUSATION**

15 **Pharmacy Technician Registration No. TCH**  
**59395**

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, Department of Consumer Affairs.

22 2. On or about October 22, 2004, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 59395 to Angel E. Orellana, also known as Angel Ernesto Orellana  
24 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times  
25 relevant to the charges brought in this Accusation and will expire on May 31, 2014, unless  
26 renewed.  
27  
28

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 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 118, subdivision (b), of the Code provides, in pertinent part, that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 4402, subdivision (a), of the Code provides that any pharmacist license that is not renewed within three years following its expiration may not be renewed, restored, or reinstated and shall be canceled by operation of law at the end of the three-year period. Section 4402, subdivision (e), of the Code provides that any other license issued by the Board may be canceled by the Board if not renewed within 60 days after its expiration, and any license canceled in this fashion may not be reissued but will instead require a new application to seek reissuance.

STATUTORY AND REGULATORY PROVISIONS

8. Section 4301 of the Code states:

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

1 to the extent that the use impairs the ability of the person to conduct with safety to the public the  
2 practice authorized by the license.

3 ...  
4 "(1) The conviction of a crime substantially related to the qualifications, functions, and  
5 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
7 substances or of a violation of the statutes of this state regulating controlled substances or  
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
10 The board may inquire into the circumstances surrounding the commission of the crime, in order  
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
14 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
15 of this provision. The board may take action when the time for appeal has elapsed, or the  
16 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
17 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
18 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not  
19 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
20 indictment."

21 9. Section 490 of the Code provides, in pertinent part, that the Board may suspend or  
22 revoke a license when it finds that the licensee has been convicted of a crime substantially related  
23 to the qualifications, functions or duties of the license.

24 10. California Code of Regulations, title 16, section 1770, states:

25 "For the purpose of denial, suspension, or revocation of a personal or facility license  
26 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a  
27 crime or act shall be considered substantially related to the qualifications, functions or duties of a  
28 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a

1 lane. Based upon these observations, the officers initiated an enforcement stop and instructed  
2 Respondent to exit the Fremont Street off-ramp and park on a side street near the exit.

3 16. Officer 1 approached the driver's side of Respondent's vehicle and noticed that the  
4 window was already rolled down. When Officer 1 asked Respondent why he was driving so fast,  
5 Respondent stated that he was trying to take care of his passenger who had had too much to drink.  
6 Officer 1 smelled the odor of an alcoholic beverage coming from within the vehicle. Officer 1  
7 also noticed that Respondent's eyes were red and glassy and his speech was slow and slurred.  
8 Respondent admitted that he consumed two small cups of beer at a friend's house in Richmond  
9 that night. Officer 1 asked Respondent to exit the vehicle. Respondent's gait was very unsteady  
10 as walked to the sidewalk. Respondent then admitted that he had actually consumed four small  
11 cups of beer at his friend's house.

12 17. Officer 1 asked Respondent to perform a series of Field Sobriety Tests (FSTs), which  
13 Respondent failed to perform as explained and demonstrated. Officer 1 concluded that  
14 Respondent had been driving under the influence and arrested him for violating Vehicle Code  
15 section 23152, subdivision (a) (driving under the influence of alcohol or drugs). Officer 1  
16 informed Respondent of implied consent, and Respondent chose the breath test. Once he was  
17 transported to the San Francisco CHP office he completed the breath test, which showed that he  
18 had a blood alcohol content of .212 percent and .215 percent. Respondent was then transported to  
19 San Francisco County Jail for booking.

20 18. Once they arrived to the San Francisco County Jail, Officer 2 escorted Respondent to  
21 a holding cell for a complete search with a metal detector. During the complete search,  
22 Respondent removed a clear plastic bag containing a white powdery substance from his right  
23 sock. When Officer 1 learned of what had been found in Respondent's sock, he informed  
24 Respondent that he would be adding a charge for violation of Health and Safety Code section  
25 11350, subdivision (a) (possession of controlled substance) to Respondent's booking card. After  
26 Officer 1 walked away, Officer 2 heard Respondent say, "It's Cocaine and I am going to lose my  
27 job." The substance tested positive for Cocaine on a presumptive test.

1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare."

### 3 CONTROLLED SUBSTANCES / DANGEROUS DRUGS

4 11. Section 4021 of the Code states:

5 "'Controlled substance' means any substance listed in Chapter 2 (commencing with Section  
6 11053) of Division 10 of the Health and Safety Code."

7 12. Section 4022 of the Code states, in pertinent part:

8 "'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self use,  
9 except veterinary drugs that are labeled as such, and includes the following:

10 "(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without  
11 prescription,' 'Rx only,' or words of similar import.

12 ...  
13 "(c) Any other drug or device that by federal or state law can be lawfully dispensed only on  
14 prescription or furnished pursuant to Section 4006."

15 13. Cocaine is Schedule II controlled substance and a narcotic as designated by Health  
16 and Safety Code section 11055, subdivision (b)(6), and a dangerous drug within the meaning of  
17 Code section 4022.

### 18 COST RECOVERY

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

### 23 FACTS

24 15. On or about February 26, 2012, at approximately 1:35 a.m., two California Highway  
25 Patrol Officers were on patrol and traveling westbound on Interstate 80, near the Treasure Island  
26 on-ramp. Officer 1 was riding in the passenger seat of the patrol vehicle, and Officer 2 was  
27 driving. Officer 1 first observed Respondent's vehicle traveling in excess of 75 miles-per-hour in  
28 a 50 mile-per-hour zone. Both officers observed Respondent's vehicle swerving in and out of its

1           19. On or about May 22, 2012, in a criminal matter entitled *The People of the State of*  
2 *California v. Angel Ernesto Orellana*, in the San Francisco County Superior Court, Respondent  
3 was convicted by plea of nolo contendere of violating Vehicle Code section 23103 (reckless  
4 driving), a misdemeanor. Respondent was ordered to serve 18 months of probation, complete a  
5 12 hour First Offenders Program, and to pay various fees and fines.

6                           FIRST CAUSE FOR DISCIPLINE  
7                           (Unprofessional Conduct – Possession of Cocaine)  
8                           (Bus. & Prof. Code § 4301)

9           20. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
10 action under Code section 4301 in that he engaged in unprofessional conduct by possessing  
11 Cocaine. The circumstances are set forth above in paragraphs 14 through 18.

12                           SECOND CAUSE FOR DISCIPLINE  
13                           (Unprofessional Conduct – Use of Alcohol Dangerous Manner)  
14                           (Bus. & Prof. Code § 4301, subd. (h))

15           21. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
16 action under Code section 4301, subdivision (h), in that he used alcohol in a dangerous manner.  
17 The circumstances are set forth above in paragraphs 14 through 18.

18                           THIRD CAUSE FOR DISCIPLINE  
19                           (Unprofessional Conduct – Conviction)  
20                           (Bus. & Prof. Code § 4301, subd. (l))

21           22. Respondent has subjected his Pharmacy Technician Registration to disciplinary  
22 action under Code section 4301, subdivision (l), as defined by California Code of Regulations  
23 section 1770, in that he was convicted of a crime substantially related to the qualifications, duties,  
24 or functions of a licensee or registrant. The circumstances are set forth above in paragraphs 14  
25 through 18.

26                           PRAYER

27           WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this  
28 Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

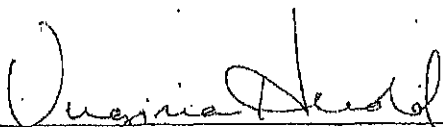
1. Revoking or suspending Pharmacy Technician Registration Number TCH 59395,  
issued to Angel E. Orellana, also known as Angel Ernesto Orellana;



1           2.    Ordering Angel E. Orellana, also known as Angel Ernesto Orellana to pay the Board  
2 of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to  
3 Business and Professions Code section 125.3; and

4           3.    Taking such other and further action as deemed necessary and proper.  
5  
6

7  
8 DATED: 2/12/13

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

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