

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

In the Matter of the Accusation Against:

DANIEL DEJESUS MEJIA,

**Pharmacy Technician Registration No. TCH
109456**

Respondent.

Case No. 5374

OAH No. 2015080727

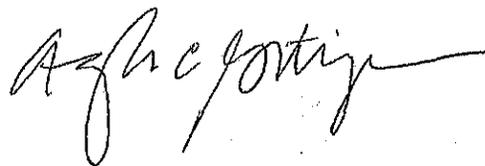
DECISION AND ORDER

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 May 26, 2016.

It is so ORDERED on April 26, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 9, 2016, in Los Angeles.

Shawn P. Cook, Deputy Attorney General, represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Daniel DeJesus Mejia appeared on his own behalf.

Oral and documentary evidence was received. The record was held open to allow the parties to submit additional documents by March 1, 2016, and to file objections to any such documents by March 8, 2016. Complainant timely filed additional documents, which were collectively marked for identification as Ex. 10. Respondent filed no objection and Ex. 10 was admitted. Respondent filed no additional documents.

The record was closed and the matter was submitted on March 8, 2016.

SUMMARY

Complainant seeks to revoke or suspend respondent's Pharmacy Technician registration for unprofessional conduct based on respondent's criminal conviction for possession of more than one ounce of marijuana and on allegations that he possessed for sale and attempted to sell marijuana. Respondent admits he was convicted for possession of more than one ounce of marijuana but denies that he sold or attempted to sell marijuana. He offered evidence of mitigation and rehabilitation. As discussed below, there is cause to revoke respondent's registration.

FACTUAL FINDINGS

A preponderance of the evidence established the following facts:

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.
2. The Board issued Pharmacy Technician Registration Number TCH 109456 to respondent on December 29, 2010. The license is scheduled to expire on March 31, 2016, unless renewed.

Respondent's Criminal Conviction

3. On August 21, 2014, in *People v. Mejia* (Super. Ct. Los Angeles County, 2014, No. VA136078), respondent pled nolo contendere and was convicted of violating Health and Safety Code section 11357, subdivision (c) [possession of more than one ounce of marijuana], a felony. The court found a factual basis for and accepted the plea. The court suspended imposition of sentence and placed respondent on three years' formal probation under terms and conditions including that he register as a convicted narcotics offender, obey all laws and orders of the court, serve 10 days in jail with credit for 10 days in custody, and pay a \$300 restitution fine, \$70 in assessments, and a \$50 lab analysis fee.

4. On December 2, 2014, on respondent's petition, the court reclassified respondent's conviction as a misdemeanor in accordance with Proposition 47.¹ The court ordered probation continued on the same terms and conditions, but changed respondent's formal probation to summary probation and ordered respondent to perform 15 days of community service. On September 18, 2015, at respondent's request, the court ordered respondent to serve an additional 15 days in county jail in lieu of performing 15 days of community service.

5. The circumstances underlying the conviction are that, on July 17, 2014, Los Angeles County Deputy Sheriffs responded to a call about a person allegedly selling narcotics in front of a Bellflower residence. On arrival, the deputies observed respondent and two other

¹ Proposition 47, which became effective November 5, 2014, provides that "[a] person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors." (Pen. Code, § 1170.18, subd. (f).) Respondent was convicted under Health and Safety Code section 11357, subdivision (c), made a misdemeanor by Proposition 47. (See Pen. Code, § 1170.18, subd. (a).)

men sitting on the curb in front of the reported location. The deputies smelled marijuana and observed respondent place a cigarette under his legs. The deputies retrieved the cigarette; it was later determined that the cigarette contained marijuana. The deputies placed the three men in the back seat of the patrol car while investigating the scene. When asked for identification, one of the men said it was in a vehicle parked nearby. The deputies searched the vehicle to recover the owner's identification and found a black bag in which were a one-liter plastic bag holding a substance later determined to be 38.196 grams (about one and one-third ounces) of marijuana in an unlabeled container, a digital scale, a small plastic bindle, and a torn sandwich-sized plastic bag. Respondent was carrying \$60 in small bills. Respondent admitted that the bag and the materials it contained belonged to him. Respondent told the deputies he had a prescription for medical marijuana, but he was unable to produce it.

6. Sheriff's Deputy Michael Lucero, one of the two deputies who arrested respondent on July 7, 2014, testified to the facts and circumstances underlying the conviction and substantiated the statements he wrote in his report of the incident. Deputy Lucero testified that his observations led him to conclude that respondent was engaged in selling marijuana. The items he found at the scene were consistent with known indicia of possession of drugs for sale, based on his training and experience. Those indicia present at respondent's arrest were:

- a. Cash in small denominations.
- b. A digital scale to weigh narcotics for customers.
- c. An individually packaged bindle, prepackaged to make sales quicker.
- d. A large amount of marijuana.
- e. The drug's presence in a vehicle, rather than in a home.
- f. The drug's not being in a labeled package from a dispensary, which is usual for medical marijuana.

7. Respondent has paid the court-ordered assessments and the lab analysis fee, but he has not yet paid the \$300 restitution fine. He began participating in a rehabilitation program but stopped. Respondent's three-year probationary period expires on August 21, 2017.

Other Disciplinary Considerations

8. The Board issued Citation number CI 2011 52897 to respondent on October 10, 2012. The Citation was issued because respondent violated Business and Professions Code sections 4301, subd. (h) [unprofessional conduct—administering to oneself of any controlled substance, or use of dangerous drugs or alcohol], resulting in an administrative fine of \$50, and

4301, subd. (l) [unprofessional conduct—conviction of a crime substantially related to pharmacy], resulting in an administrative fine of \$50.²

9. Underlying the Citation was respondent's July 18, 2012, conviction on his plea of nolo contendere of a violation of Vehicle Code section 23152, subdivision (b) [driving with blood alcohol content exceeding 0.08 percent], a misdemeanor.

Mitigation, Rehabilitation, and Findings Pertinent to License Discipline

10. Although respondent attempted to challenge the validity of the written statement he provided to Deputy Lucero at the time of his arrest, respondent admitted that the marijuana and the digital scale found in the car were his. He denied, though, that he was selling marijuana. Respondent testified that he had \$60 in small bills at the time of his arrest because he was paid in small bills for work he was doing as a barber.

11. Respondent is presently employed at Razorsharp Barbershop in Cerritos. He has been licensed by the Board of Barbering and Cosmetology since August 2015; he believes that the Board of Barbering and Cosmetology is not interested in whether he has been convicted for a drug-related offense. Respondent's annual income is about \$20,000, plus tips. Respondent pays \$200 weekly rent for his barber chair. He also has monthly expenses including \$300 rent, \$400 for two school loans, and automobile insurance. These expenses far exceed the amount respondent claims to earn before tips. Respondent plans to open his own barbershop in two years.

12. In 2012, respondent got a job as a pharmacy technician at a Rite Aid in Paramount. He was fired in February 2013 or 2014 for improperly letting family members other than his spouse and child use his Wellness card to get employee discounts. He has not worked as a pharmacy technician since. Respondent would like a pharmacy technician license because, after he opens his own barbershop, he may also want to work as a pharmacy technician. He believes the health field is "booming."

13. Respondent offered no evidence of rehabilitation since his conviction, other than evidence of his employment as a barber.

Cost of Enforcement

14. The Board incurred enforcement costs, in the form of Attorney General fees and costs, in the amount of \$3,302.50. Those costs are reasonable. Complainant anticipated that the Board would incur approximately \$1,190 in additional attorney's fees from February 1, 2016, to the commencement of hearing. (Ex. 3.) Complainant did not establish why she could not submit evidence of those actual additional enforcement costs at hearing.

² All further statutory references are to the Business and Professions Code except where otherwise stated.

LEGAL CONCLUSIONS

Applicable Authority

1. The Board may deny, suspend, or revoke a license for the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee. (Code, §§ 480, subd. (a), 490.) A crime is substantially related to the qualifications, functions, or duties of a licensee “if to a substantial degree it evidences present or potential unfitness of a licensee . . . to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.” (Cal. Code Regs., tit. 16, § 1770.)

2. The Board may suspend or revoke a license for unprofessional conduct. (Code, §§ 4300, 4301.) Unprofessional conduct includes violating any laws regulating controlled substances and dangerous drugs (Code, § 4301, subd. (j)), the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee (Code, § 4301, subd. (l)), violating any laws governing pharmacy (Code, § 4301, subd. (o)), and actions or conduct that would warrant denial of a license (Code, § 4301, subd. (p)).

3. The record of a conviction of a law regulating controlled substances or dangerous drugs “shall be conclusive evidence of unprofessional conduct.” (Code, § 4301, subd. (l).) A person shall not possess any controlled substances without a prescription, except in circumstances not applicable here. (Code, § 4060.) Marijuana is a controlled substance (Health & Saf. Code, § 11054, subd. (d)(13)) and a dangerous drug under Code section 4022.

4. The Board retains jurisdiction to discipline an expired license. (Code, §§ 118, subd. (b), 4300.1.)

Burden of Proof

5. The Board bears the burden of proof by a preponderance of the evidence, because pharmacy technicians hold an occupational license. (Evid. Code, § 115.) This is supported by the Board’s Disciplinary Guidelines (Guidelines),³ which provide:

Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist.

³ “In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.” (Cal. Code Regs., tit. 16, § 1760.)

(Guidelines, p. 43.) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, “the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposing a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

6. Moreover, the law makes plain that a pharmacy technician performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. “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.” (Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician’s nondiscretionary tasks may include “(a) removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

Cause for Discipline

7. Cause exists to discipline respondent’s pharmacy technician license for unprofessional conduct under Business and Professions Code section 4301, subdivision (j), in that he violated laws regulating controlled substances and dangerous drugs, as set forth in Factual Findings 3 through 6 and 10 and Legal Conclusion 10.

8. Cause exists to discipline respondent’s pharmacy technician license for unprofessional conduct under Business and Professions Code section 4301, subdivision (l), in that he was convicted of a crime substantially related to the qualifications, functions, and duties of a licensee, as set forth in Factual Findings 3 through 6 and 10 and Legal Conclusion 10.

9. Cause exists to discipline respondent’s pharmacy technician license for unprofessional conduct under Business and Professions Code section 4301, subdivision (o), in that he violated laws governing pharmacy, as set forth in Factual Findings 3 through 6 and 10 and Legal Conclusion 10.

10. Cause exists to discipline respondent’s pharmacy technician license for unprofessional conduct under Business and Professions Code section 4301, subdivision (p), in that he engaged in actions or conduct that would warrant denial of a license, as set forth in Factual Findings 3 through 6 and 10 and Legal Conclusion 10.

11. Respondent's convictions are substantially related to the qualifications, functions, and duties of a pharmacy technician. Respect for public safety and compliance with the law are paramount for pharmacy technicians, who have access to dangerous drugs and controlled substances, are privy to sensitive personal information of pharmacy clients, and have been placed in a position of trust with respect to patient care. Respondent's crime of possessing more than one ounce of marijuana, his failure to produce evidence of a prescription for the marijuana, as well as evidence strongly suggesting that respondent possessed the marijuana for sale, and his lack of credibility on that subject in his testimony at this hearing, demonstrate respondent's unwillingness to take responsibility for flouting the law and respondent's potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, and welfare. In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (See *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.) The statutes relating to the licensing of professions generally are designed to protect the public from dishonest, untruthful, and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.)

12. The following factors are relevant when determining what discipline to impose on a license: actual or potential harm to the public, actual or potential harm to any consumer, prior disciplinary record, number and variety of current violations, nature and severity of the crimes under consideration, aggravating evidence, mitigating evidence, rehabilitation evidence, compliance with terms of any criminal sentence or probation, overall criminal record, evidence of expungement under Penal Code section 1203.4, time passed since the acts or offenses, whether the conduct was intentional or negligent or demonstrated incompetence, and financial benefit to the respondent from the misconduct. (Guidelines (p. 3), Code, § 4300.)

13. Respondent engaged in an offense now considered under the law to be less serious than it once was. Possessing over one ounce of marijuana with no evidence of a prescription has been reclassified from a felony to a misdemeanor. There is no evidence on the record that respondent suffers from any drug dependency or that he abuses controlled substances. There is strong evidence of the presence of indicia of drug sales. Although there is no admissible evidence that respondent was engaged in selling drugs at the time of his arrest, respondent's denial of the allegation was less than credible. Respondent also offered little evidence of rehabilitation. He continues to work as a licensed barber. He admitted that he was fired from his last pharmacy job for dishonesty. His stated belief that the Board of Barbering and Cosmetology is not interested in whether he has been convicted for a drug-related offense is unsubstantiated and contrary to law. Respondent's crimes and convictions are just over three years old and he is still on probation. Respondent's behavior while on criminal probation is afforded little weight toward establishing rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080.)

Cost Recovery

14. Complainant is entitled to the recover reasonable costs of prosecution of this matter in the amount of \$3,302.50, under Code section 125.3, as set forth in Factual Finding 14.

A good faith estimate of costs may be used "where actual costs are unavailable." (Code, § 125.3.) Because complainant did not establish why she could not submit evidence of actual additional costs at hearing (Factual Finding 14), an award of anticipated costs must be, and is, disallowed.

15. Respondent shall pay costs if and when he again successfully applies for and receives a license from the Board.

ORDER

Pharmacy technician license number TCH 109456, issued to respondent Daniel DeJesus Mejia, is revoked.

If and when respondent successfully applies for and receives a license from the Board, he shall pay the Board costs in the amount of \$3,302.50 as a condition precedent to licensure.

DATED: April 1, 2016

DocuSigned by:

Howard W. Cohen

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HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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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. 5374

12 **DANIEL DEJESUS MEJIA**
16245 Lakewood Blvd., #8
13 Bellflower, CA 90706

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
109456

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about December 29, 2010, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number TCH 109456 to Daniel DeJesus Mejia (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on March 31, 2016, unless renewed.

25 **JURISDICTION**

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

1 4. Section 22 of the Code states:

2 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
3 administration of the provision is vested, and unless otherwise expressly provided, shall include
4 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
5 'agency.'

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

10 6. Section 150 of the Code states: "The department is under the control of a civil
11 executive officer who is known as the Director of Consumer Affairs."

12 7. Section 477 of the Code states:

13 As used in this division:

14 "(a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
15 'examining committee,' 'program,' and 'agency.'

16 "(b) 'License' includes certificate, registration or other means to engage in a
17 business or profession regulated by this code."

18 8. Section 480 of the Code states in pertinent part:

19 "(a) A board may deny a license regulated by this code on the grounds that the applicant
20 has one of the following:

21 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
22 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
23 board is permitted to take following the establishment of a conviction may be taken when the
24 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
25 an order granting probation is made suspending the imposition of sentence, irrespective of a
26 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

27 * * *

28 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is

1 substantially related to the qualifications, functions, or duties of the business or profession for
2 which application is made.

3 9. Section 490 of the Code provides, in pertinent part, that a board may suspend or
4 revoke a license on the ground that the licensee has been convicted of a crime substantially
5 related to the qualifications, functions, or duties of the business or profession for which the
6 license was issued.

7 10. Section 493 of the Code states:

8 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
18 'registration.'"

19 11. Section 4022 provides in pertinent part that: "Dangerous drug" or "dangerous
20 device" means any drug or device unsafe for self-use in humans or animals, and includes the
21 following:

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

24
25 * * *

26 (c) Any other drug or device that by federal or state law can be lawfully dispensed only on
27 prescription or furnished pursuant to Section 4006, 4022.5. (a) "Designated representative" means
28 an individual to whom a license has been granted pursuant to Section 4053. A pharmacist

1 fulfilling the duties of Section 4053 shall not be required to obtain a license as a designated
2 representative."

3 12. Section 4060 of the Code states:

4 "No person shall possess any controlled substance, except that furnished to a person upon
5 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
6 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse
7 midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
8 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
9 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
10 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
11 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
12 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
13 nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
14 labeled with the name and address of the supplier or producer.

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

18 13. Section 4300 of the Code states:

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

20 "(b) The board shall discipline the holder of any license issued by the board, whose default
21 has been entered or whose case has been heard by the board and found guilty, by any of the
22 following methods:

23 "(1) Suspending judgment.

24 "(2) Placing him or her upon probation.

25 "(3) Suspending his or her right to practice for a period not exceeding one year.

26 "(4) Revoking his or her license.

27 "(5) Taking any other action in relation to disciplining him or her as the board in its
28 discretion may deem proper.

1 * * *

2 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5
3 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board
4 shall have all the powers granted therein. The action shall be final, except that the propriety of
5 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of
6 Civil Procedure."

7 14. Section 4300.1 of the Code states:

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

13 15. Section 4301 of the Code states:

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

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

19 * * *

20 "(l) The conviction of a crime substantially related to the qualifications, functions, and
21 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
22 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
23 substances or of a violation of the statutes of this state regulating controlled substances or
24 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
25 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
26 The board may inquire into the circumstances surrounding the commission of the crime, in order
27 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
28 or dangerous drugs, to determine if the conviction is of an offense substantially related to the

1 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
2 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
3 of this provision. The board may take action when the time for appeal has elapsed, or the
4 judgment of conviction has been affirmed on appeal or when an order granting probation is made
5 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
6 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
7 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
8 indictment.

9 * * *

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

14 "(p) Actions or conduct that would have warranted denial of a license."

15 "(p) Actions or conduct that would have warranted denial of a license.

16 16. Health and Safety Code sec. 11154, subd. (a) provides: "Except in the regular
17 practice of his or her profession, no person shall knowingly prescribe, administer, dispense, or
18 furnish a controlled substance to or for any person or animal which is not under his or her
19 treatment for a pathology or condition other than addiction to a controlled substance, except as
20 provided in this division."

21 17. Health and Safety Code sec. 11171 provides that: "No person shall prescribe,
22 administer, or furnish a controlled substance except under the conditions and in the manner
23 provided by this division.

24 18. Health and Safety Code sec. 11357, subd (c) provides in pertinent part: "Except as
25 authorized by law, every person who possesses more than 28.5 grams of marijuana, other than
26 concentrated cannabis, shall be punished by imprisonment in a county jail for a period of not
27 more than six months or by a fine of not more than five hundred dollars (\$500), or by both such
28 fine and imprisonment."

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

5 20. California Code of Regulations, title 16, section 1770, states:

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

12 CONTROLLED SUBSTANCE

13 21. Marijuana is a hallucinogenic Schedule I controlled substance as defined in Health
14 and Safety Code section 11054(d)(13) and a dangerous drug according to Business and
15 Professions Code section 4022.

16 FIRST CAUSE FOR DISCIPLINE

17 (Unprofessional Conduct, Possession of Marijuana for Sale)

18 22. Respondent is subject to disciplinary action under sections 4300 and 4301,
19 subdivision j, in conjunction with section 4060 and Health and Safety Code sections 11154,
20 subd. (a) and 11171, in that on or about July 17, 2014, Respondent possessed a substantial
21 quantity of marijuana for sale. The circumstances are as follows:

22 23. On or about on July 17, 2014, Los Angeles County Deputy Sheriffs responded to a
23 call regarding a suspect selling narcotics in front of the property located at 8653 Mayne St.,
24 Bellflower, CA. Upon arrival deputies observed the Respondent that matched the description of
25 the suspect and two other males sitting on the curb in front of the location. Upon approaching the
26 Respondent, deputies immediately smelled the strong odor of marijuana and observed the
27 Respondent place a cigarette under his legs. All subjected were detained pending a narcotics
28 investigation.

1 the conviction are as alleged in the preceding paragraphs 23 through 25 that are incorporated by
2 this reference as though fully set forth.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct, Conduct that Would Have Warranted License Denial)

5 28. Respondent is subject to disciplinary action under sections 4300 and 4301,
6 subdivision (p), in that Respondent's conviction as alleged in the preceding paragraph 26, that is
7 incorporated by this reference as though fully set forth, would have warranted denial of a license
8 as a pharmacy technician.

9 DISCIPLINE CONSIDERATIONS

10 29. To determine the degree of discipline, if any, to be imposed on Respondent,
11 Complainant alleges that on or about October 10, 2012, in a prior action, the Board of Pharmacy
12 issued Citation Number CI 2011 52897 for violation of Code sec. 4301, subd. (h)
13 [Unprofessional Conduct -Administering to oneself, of any controlled substance, or the use of any
14 dangerous drug or of alcoholic beverages] with an administrative penalty of \$50.00; and Code
15 sec. 4301, subd. (i) {Unprofessional Conduct- Conviction of a crime substantially related to the
16 practice pharmacy] with an administrative penalty of \$50.00. The citation has become final and
17 nonappealable. The circumstances of the citation are as follows:

18 30. Code section 4301(h) authorizes the Board to take action against a licensee for their
19 use of an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to
20 oneself or others. Specifically, on June 09, 2012, Respondent was arrested for violating Vehicle
21 Code (VC) sections 23152(a) - Driving Under the Influence (DUI) of a Drug or Alcohol and
22 23152(b)- DUI/0.08 percent, a misdemeanor. Business and Professions Code section 4301(i)
23 authorizes the Board to take action against a licensee for the conviction of a crime substantially
24 related to the qualifications, functions, and duties of a licensee. Specifically, on July 18, 2012,
25 Respondent was convicted of a misdemeanor violation of VC section 23152(b)- DUI/0.08
26 percent. The Citation is now final and is incorporated by reference as if fully set forth.

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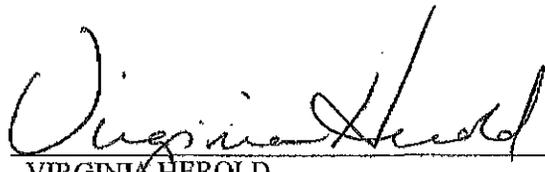
PRAYER

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 109456, issued to Daniel DeJesus Mejia
2. Ordering Daniel DeJesus Mejia 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:

6/13/15



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

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