

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

In the Matter of the Accusation Against:

SARINA MARIE RAMIREZ,

Pharmacy Technician Registration No.
TCH 74107

Respondent.

Case No. 6113

OAH No. 2018010842

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 July 10, 2018.

It is so ORDERED on June 11, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Victor Law, R.Ph.
Board President

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PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter on April 24, 2018, in Sacramento, California.

Karen R. Denvir, Deputy Attorney General, represented complainant Virginia Harold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California.

Respondent Sarina Marie Ramirez represented herself.

Evidence was received, the record was closed, and the matter was submitted for decision on April 24, 2018:

SUMMARY

Complainant seeks to discipline respondent's pharmacy technician registration on the grounds that she was convicted of a substantially related crime and consumed alcoholic beverages to an extent or in a manner dangerous or injurious to herself and others. Cause exists to discipline her registration. Considering all the evidence and the Board's Disciplinary Guidelines, respondent introduced sufficient evidence of her continued ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare, under a probationary registration. Therefore, her registration should be placed on probation, subject to terms and conditions.

FACTUAL FINDINGS

Procedural History

1. On January 26, 2007, the Board issued Original Pharmacy Technician Registration Number TCH 74107 to respondent. The registration expires September 30, 2018, unless renewed or revoked. There is no history of prior discipline of the registration.

2. On October 18, 2017, complainant, acting solely in her official capacity, signed an Accusation. The Accusation seeks to discipline respondent's registration on the grounds that she was convicted of driving a vehicle with a blood alcohol content of .08 percent or greater and consumed alcohol to an extent or in a manner dangerous or injurious to herself and others.

Criminal Conviction

3. On March 1, 2017, in the Superior Court of California, County of Sacramento, Case Number 17MI002089, respondent pled no contest to, and was convicted of, a misdemeanor violation of Vehicle Code section 23152, subdivision (b), driving a vehicle with a blood alcohol content of .08 percent or greater. She also admitted a sentencing enhancement for driving with a blood alcohol content of .20 percent or greater. Imposition of sentence was suspended, and respondent was placed on informal probation for three years. She was ordered to serve 18 days in the Sacramento County Jail, and to pay fines, fees, and assessments. She was further ordered to enroll in and complete the 9-month 1st Offender DUI Program.

4. The factual basis for respondent's conviction arose out of her January 24, 2017 arrest by the California Highway Patrol for suspicion of driving under the influence of alcohol. She told the arresting officer she had consumed one piña colada three hours prior to her arrest. Her blood alcohol content was later determined to have been .23 percent at the time she was driving.

Substantial Relationship

5. “[A] crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of the licensee or registrant to perform the functions authorized by [her] license or registration in a manner consistent with the public health, safety, or welfare.” (Cal. Code Regs., tit. 16, § 1770.) Pharmacy technicians assist pharmacists in all aspects of operating a pharmacy, including maintaining inventories of drugs, accepting orders and confirming the accuracy of orders from wholesalers, accepting prescriptions from customers, and filling prescriptions by pulling the medication from general inventory, putting the correct amount of medication in an appropriate container for the patient, labeling the container, and dispensing the medication to the patient. It is imperative that a pharmacy technician be capable of exercising sound judgment. Respondent's decision to drive her car with a blood alcohol content of .23 percent demonstrated an extreme lack of good judgment, and her

potential unfitness to perform the duties authorized by her registration in a manner consistent with public health, safety, and welfare. Therefore, her criminal conviction is substantially related to the qualifications, functions, or duties authorized by her registration.

Factors of Aggravation, Mitigation, and Rehabilitation

6. Respondent discussed her criminal conviction and the underlying conduct openly and candidly at hearing. She readily admitted she was not truthful when she told the arresting officer she consumed only one piña colada on the night of her arrest. She explained she was nervous when the officer was questioning her because she had never been stopped by law enforcement before, and foolishly stated the first thing she thought of when asked how many drinks she had consumed that night. She further explained she had consumed as many as three alcoholic drinks over a two-and-a-half-hour period four and a half hours prior to her arrest.

7. Respondent's arrest and subsequent conviction forced her to face the reality that she has a drinking problem. She also began experiencing relationship problems with her family. She voluntarily placed her name on the waiting list for The Salvation Army's Adult Rehabilitation Center's program, an inpatient alcohol and drug abuse treatment program offered at the Adult Rehabilitation Center in San Francisco. On November 26, 2017, she was admitted into a program at a sister facility in Lodi until a spot opened up at the San Francisco facility. Her first day in the program at the San Francisco facility was December 6, 2017. She will graduate from "Phase 1" of the program on September 14, 2018, and anticipates staying in the program to complete "Phase 2."

8. Michael Morrissey, the Intake Coordinator for the Adult Rehabilitation Center in San Francisco, wrote a letter confirming respondent's participation in the program. He wrote:

This letter is written in response to a request for information regarding the above[-]named individual's involvement in The Salvation Army Rehabilitation Center's program. She was admitted on December 6, 2017[,] and is expected to complete the basic minimum 6-12[-]month program after which she may apply to continue into Phase 2, 3 and 4 staying in our program for up to another 6 to 12 months.

While in the program she is required to attend six AA/NA meetings per week, weekly drug and alcohol education sessions, weekly individual and group counseling (includes parenting and anger management), weekly Bible studies, and twice weekly Chapel services. She is currently required to work 40 hours per week in our Work Therapy Program where she is helping prepare donations for our thrift stores. There is no pay for this work. She is subject to frequent, random urine drug testing and

breath testing. Her continued residence in the program is dependent upon negative drug testing results. A positive test will result in immediate discharge from the program. She may take electives called Parenting, Anger Management, Grief and Loss and Relapse Prevention and other classes that may be offered.

The Salvation Army's Adult Rehabilitation Center program is intended for men and women who suffer from alcohol and drug abuse and other social and spiritual handicaps. The program requires a minimum six-month commitment to a 12-Step, faith-based work therapy program coupled with counseling regarding addiction and other personal, social, and spiritual issues.

She has maintained a positive attitude and works diligently toward her recovery. She has an AA sponsor and is currently on step 4. She shows growth and honesty in her homework assignments and encourages others. She shows promise in her recovery, takes responsibility toward her past actions and shows sincere regret toward her behavior and honesty to correct her wrongs.

(Underline original.)

9. Respondent identified November 24, 2017, as her date of sobriety, and explained she was celebrating five months of sobriety on the date of hearing. She began attending Alcoholics Anonymous (AA) meetings in October 2017. She initially attended one AA meeting a week, but increased to three meetings a week when she enrolled in The Salvation Army's Adult Rehabilitation Center program. On some days, she attends more than one AA meeting a day, and she has attended as many as six meetings in one week. She explained she gets more out of The Salvation Army's Adult Rehabilitation Center program than just her sobriety. Since it is a faith-based program, she said she is "growing spiritually" and restoring her relationship with God and her family. She also described receiving many benefits from attending AA meetings, and intends to attend meetings indefinitely.

10. Respondent explained she is anxious to return to working as a pharmacy technician, which she may do once she enters Phase 2 of The Salvation Army's Adult Rehabilitation Center program. She has not been permitted to work since entering the program at the sister facility in Lodi on November 26, 2017. She further explained her alcohol consumption has never affected her at work, other than causing her to be tired. She never worked while under the influence of alcohol, and never diverted medication. She does not use illegal drugs. She has never been subject to discipline by an employer, and has no prior discipline by the Board. She has no criminal history other than that which has been discussed.

The Board's Disciplinary Guidelines

11. The Board has adopted Disciplinary Guidelines for consideration when determining the appropriate discipline to impose for a registrant's violation of the Pharmacy Law (Bus. & Prof. Code, § 4000 et seq.): (See Cal. Code Regs., tit. 16, § 1760 [the Board must consider "Disciplinary Guidelines (Rev. 2/2017)" when deciding disciplinary matters].) The Disciplinary Guidelines categorize different violations of the Pharmacy Law into one of four categories, and specify a recommended minimum and maximum discipline for each category. Respondent's alleged violations constitute "Category III" violations, and the recommended discipline ranges from a minimum of revocation stayed, 90-day actual suspension, probation for three to five years, and all standard terms and the appropriate optional terms, to a maximum of revocation.

Factors relevant to determining the appropriate level of discipline include the following:

1. actual or potential harm to the public

[¶] . . . [¶]

3. prior disciplinary record, including level of compliance with disciplinary order(s)

[¶] . . . [¶]

5. number and/or variety of current violations

6. nature and severity of the act(s), offense(s) or crime(s) under consideration

7. aggravating evidence

8. mitigating evidence

9. rehabilitation evidence

[¶] . . . [¶]

11. overall criminal record

[¶] . . . [¶]

13. Time passed since the act(s) or offense(s)

Discussion

12. Respondent consumed as many as three alcoholic beverages over two and a half hours on January 24, 2017, and then drove her vehicle with a blood alcohol content of .23 percent. She was convicted for driving her vehicle with a blood alcohol content of .08 percent or greater less than two months later.

13. Aggravating factors include her blood alcohol content was nearly three times the legal limit for driving, her conduct posed a significant danger to the public and herself, and she remains on criminal probation through February 29, 2020. (See *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [an accurate determination of one's rehabilitation necessarily requires a period of evaluation during which she is not on criminal probation].) On the other hand, she has been registered with the Board for more than 11 years without incident. While she committed two separate violations of the Pharmacy Law, they are based on the same underlying conduct. She has no other criminal history.

14. Most importantly, respondent's testimony was credible, sincere, and compelling. She demonstrated significant insight into her underlying abuse of alcohol, and voluntarily sought inpatient treatment. She has taken significant steps towards achieving and maintaining her sobriety, and celebrated her fifth month of sobriety on the date of hearing. Her testimony was corroborated by Mr. Morrissey's correspondence. She enjoys strong support in maintaining her sobriety, as demonstrated by her mother's and best friend's willingness to wake up at 3:00 a.m. to drive respondent from San Francisco to Sacramento and ensure she arrived on time for a 9:00 a.m. hearing.

Summary

15. Complainant established by clear and convincing evidence that cause exists to discipline respondent's registration based on her criminal conviction and the underlying criminal conduct. Considering all the evidence and the Disciplinary Guidelines, respondent presented sufficient evidence of the substantial steps she has taken and continues to take towards rehabilitating herself to demonstrate her continued fitness to perform the duties of a registered pharmacy technician, under a probationary license. She showed significant insight into her abuse of alcohol, voluntarily enrolled in a nine-month inpatient treatment program, and demonstrated her commitment to maintaining her sobriety. Such evidence also established that an actual suspension of her registration for any period of time would serve no public protection purpose, but would be unduly punitive. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 768 ["Administrative proceedings to . . . impose discipline on a professional license are noncriminal and not penal; they are not intended to punish the licensee, but rather to protect the public".]) Therefore, respondent's pharmacy technician registration should be placed on probation and subject to terms and conditions.

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Costs of Enforcement

16. Complainant has requested costs of enforcement in the total amount of \$3,077.50 pursuant to Business and Professions Code section 125.3. This amount consists entirely of costs incurred by the Office of the Attorney General and billed to the Board. At hearing, complainant introduced a Certification of Prosecution Costs: Declaration of Karen R. Denvir. Attached to the Certification is a printout of a Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the total amount of \$3,077.50. Respondent did not object to any of complainant's evidence of costs of enforcement.

Costs of enforcement in the amount of \$3,077.50 are reasonable as explained further in Legal Conclusion 7 below.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. Complainant has the burden of proving the grounds for disciplining respondent's pharmacy technician registration alleged in the Accusation. (*Daniels v. Department of Motor Vehicles* (1983) 33 Cal.3d 532, 536 ["When an administrative agency initiates an action to suspend or revoke a license, the burden of proving the facts necessary to support the action rests with the agency making the allegation"].)

2. Two different standards of proof apply in license discipline proceedings: the clear and convincing to a reasonable certainty standard, and the preponderance of the evidence standard. In determining which standard applies, the courts draw "a distinction between professional licenses, such as those held by doctors [citation], lawyers [citation], and real estate brokers [citation] on the one hand, and nonprofessional or occupational licenses, such as those held by food processors [citation] and vehicle salespersons [citation], on the other hand." (*Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911, 916.) The clear and convincing standard applies when disciplining the former, whereas the preponderance of the evidence standard applies when disciplining the latter. (*Ibid.*)

Rationalizing the basis for applying a different standard depending on the type of license subject to discipline, the appellate court in *San Benito Foods v. Veneman* (1996) 50 Cal.App.4th 1889, explained:

Because a professional license represents the licensee's fulfillment of extensive educational, training and testing requirements, the licensee has an extremely strong interest in retaining the license that he or she has expended so much effort in obtaining. It makes sense to require that a higher standard of

proof be met in a proceeding to revoke or suspend such a license. The same cannot be said for a licensee's interest in retaining a [nonprofessional] license.

(*Id.*, at p. 1894.)

Business and Professions Code section 4202 provides the following regarding the issuance of a pharmacy technician registration:

(a) The board may issue a pharmacy technician license to an individual if he or she is a high school graduate or possesses a general educational development certificate equivalent, and meets any one of the following requirements:

(1) Has obtained an associate's degree in pharmacy technology.

(2) Has completed a course of training specified by the board.

(3) Has graduated from a school of pharmacy recognized by the board.

(4) Is certified by the Pharmacy Technician Certification Board.

(b) The board shall adopt regulations pursuant to this section for the licensure of pharmacy technicians and for the specification of training courses as set out in paragraph (2) of subdivision (a). Proof of the qualifications of any applicant for licensure as a pharmacy technician shall be made to the satisfaction of the board and shall be substantiated by any evidence required by the board.

(c) The board shall conduct a criminal background check of the applicant to determine if an applicant has committed acts that would constitute grounds for denial of licensure, pursuant to this chapter or Chapter 2 (commencing with Section 480) of Division 1.5.

(d) The board may suspend or revoke a license issued pursuant to this section on any ground specified in Section 4301.

(e) Once licensed as a pharmacist, the pharmacy technician registration is no longer valid and the pharmacy technician license shall be returned to the board within 15 days.

Based upon the above, complainant must prove the existence of cause to discipline respondent's pharmacy technician registration by clear and convincing evidence to a reasonable certainty. "The courts have defined clear and convincing evidence as evidence which is so clear as to leave no substantial doubt and as sufficiently strong to command the unhesitating assent of every reasonable mind. [Citations.] It has been said that a preponderance calls for probability, while clear and convincing proof demands a *high probability* [citations]." (*In re Terry D.* (1978) 83 Cal.App.3d 890, 899; italics original.)

Cause for Discipline

3. A pharmacy technician registration may be disciplined if the licensee has engaged in "unprofessional conduct," which includes "the conviction of a crime substantially related to the qualifications, functions, and duties of the licensee under this chapter." (Bus. & Prof. Code, § 4301, subd. (l).) Respondent was convicted of driving a vehicle with a blood alcohol content of .08 percent or greater, a crime that is substantially related to her registration. Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (l).

4. "Unprofessional conduct" also includes "the administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." (Bus. & Prof. Code, § 4301, subd. (h).) On January 24, 2017, respondent consumed alcoholic beverages to an extent or in a manner dangerous to herself and others. Therefore, cause exists to discipline her registration pursuant to Business and Professions Code section 4301, subdivision (h).

Conclusion

5. Cause exists to discipline respondent's pharmacy technician registration for the reasons explained in Legal Conclusions 3 and 4, individually and collectively. When all the evidence is considered, respondent sufficiently demonstrated her continued ability to perform her duties as a pharmacy technician in a manner consistent with public health, safety, and welfare, under a probationary license, for the reasons discussed in Factual Finding 15. Therefore, her license should be placed on probation, subject to the terms and conditions specified in the Order below.

Award of Costs

6. Business and Professions Code section 125.3 states, in pertinent part:

(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon

request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

[¶] . . . [¶]

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

California Code of Regulations, title 1, section 1042, subdivision (b), states the following about cost recovery:

Except as otherwise provided by law, proof of costs at the Hearing may be made by Declarations that contain specific and sufficient facts to support findings regarding actual costs incurred and the reasonableness of the costs, which shall be presented as follows:

[¶] . . . [¶]

(2) For services provided by persons who are not agency employees, the Declaration shall be executed by the person providing the service and describe the general tasks performed, the time spent on each task and the hourly rate or other compensation for the service. In lieu of this Declaration, the agency may attach to its Declaration copies of the time and billing records submitted by the service provider.

In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his or her position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

7. Complainant introduced prima facie evidence of the reasonable costs the Board incurred prosecuting this matter, and respondent did not rebut that evidence as explained in Factual Finding 16. After considering the evidence and the pertinent *Zuckerman* factors, costs in the amount of \$3,077.50 are reasonable and are awarded as set forth in the Order below.

ORDER

Pharmacy Technician Registration Number TCH 74107 issued to respondent Sarina Marie Ramirez is REVOKED; however, the revocation is STAYED, and respondent's registration is placed on PROBATION for five years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations. She shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty, or nolo contendere, no contest, or similar, in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- the filing of a disciplinary pleading, issuance of a citation, or initiation of another administrative action filed by any state or federal agency which involves respondent's license 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 such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, she shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation.

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

3. **Interview with the Board**

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. **Cooperate with Board Staff**

Respondent shall timely cooperate with the Board's inspection program and with its monitoring and investigation of her compliance with the terms and conditions of her probation, including but not limited to: timely responses to requests for information by Board staff; timely compliance with directives from Board staff regarding requirements of any term or condition of probation; and timely completion of documentation pertaining to a term or condition of probation. Failure to timely cooperate shall be considered a violation of probation.

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

During the period of probation, respondent shall notify all present and prospective employers of the decision in Case Number 6113 and the terms, conditions, and restrictions imposed on her by the decision, as follows:

- Within thirty (30) days of the effective date of this decision, and within ten (10) days of undertaking any new employment, respondent shall report to the Board in writing the name, physical address, and mailing address of each of her employer(s), and the name(s) and telephone number(s) of all of her direct supervisor(s), as well as any pharmacist(s)-in-charge, designated representative(s)-in-charge, responsible manager, or other compliance supervisor(s) and the work schedule, if known. She shall also include the reason(s) for leaving the prior employment. She shall sign and return to the Board a written consent authorizing the Board or its designee to communicate with all of her employer(s) and supervisor(s), and authorizing those employer(s) or supervisor(s) to communicate with the Board or its designee, concerning her work status, performance,

and monitoring. Failure to comply with the requirements or deadlines of this condition shall be considered a violation of probation.

- Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, she shall cause (a) her direct supervisor, (b) her pharmacist-in-charge, designated representative-in-charge, responsible manager, or other compliance supervisor, and (c) the owner or owner representative of her employer, to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in Case Number 6113, and terms and conditions imposed thereby. If one person serves in more than one role described in (a), (b), or (c), the acknowledgment shall so state. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board. In the event of a change in the person(s) serving the role(s) described in (a), (b), or (c) during the term of probation, respondent shall cause the person(s) taking over the role(s) to report to the Board in writing within fifteen (15) days of the change acknowledging that he or she has read the decision in Case Number 6113, and the terms and conditions imposed thereby.

- If respondent works for or is employed by or through an employment service, she must notify the person(s) described in (a), (b), and (c) above at every entity licensed by the Board of the decision in Case Number 6113, and the terms and conditions imposed thereby in advance of her commencing work at such 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 an employment service, she shall cause the person(s) described in (a), (b), and (c) above at the employment service to report to the Board in writing acknowledging that he or she has read the decision in Case Number 6113, and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that these acknowledgment(s) are timely submitted to the Board.

Failure to timely notify present or prospective employer(s) or failure to cause the identified person(s) with that/those employer(s) to submit timely written acknowledgments to the Board shall be considered a violation of probation.

“Employment” within the meaning of this provision includes any full-time, part-time, temporary, relief, or employment/management service position as a pharmacy technician, or any position for which a pharmacy technician registration is a requirement or criterion for employment, whether respondent is an employee, independent contractor or volunteer.

6. **Notification of Change(s) in Name, Address(es), or Phone Number(s)**

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

7. **Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of prosecution in the amount of \$3,077.50. She shall make said payments as follows:

- 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.
- Respondent shall be permitted to pay these costs in a payment plan approved by the Board or its designee, so long as full payment is completed no later than one (1) year prior to the end date of probation.

8. **Probation Monitoring Costs**

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

9. **Status of License**

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

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

10. **Registration Surrender While on Probation/Suspension**

Following the effective date of this decision, should respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, she may relinquish her registration, including any indicia of registration issued by the Board, along with a request to surrender the registration. The Board or its designee shall have the discretion whether to accept the surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of her registration history with the board.

Upon acceptance of the surrender, respondent shall relinquish her pocket and/or wall registration, including any indicia of registration not previously provided to the Board within ten (10) days of notification by the Board that the surrender is accepted if not already provided.

Respondent may not reapply for any registration or license from the Board for three (3) years from the effective date of the surrender. She shall meet all requirements applicable to the registration or license sought as of the date the application for that registration or license is submitted to the Board, including any outstanding costs.

11. **Maintenance of Certification**

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

12. **Practice Requirement – Extension of Probation**

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall extend the period of probation by one month. During any such period of insufficient employment, respondent must nonetheless comply with all terms and conditions of probation, unless she receives a waiver in writing from the board or its designee.

If respondent does not practice as a pharmacy technician in California for the minimum number of hours in any calendar month, for any reason (including vacation), she shall notify the Board in writing within ten (10) days of the conclusion of that calendar month. This notification shall include at least: the date(s), location(s), and hours of last practice; the reason(s) for the interruption or reduction in practice; and the anticipated date(s) on which she will resume practice at the required level. She shall further notify the Board in writing within ten (10) days following the next calendar month during which she practices as a pharmacy technician in California for the minimum of hours. Any failure to timely provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to be extended pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months. The Board or its designee may post a notice of the extended probation period on its website.

13. **Violation of Probation**

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over her, and the Board shall provide notice to her that 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. The Board or its designee may post a notice of the extended probation period on its website.

If respondent violates probation in any respect, the Board, after giving her notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, or the preparation of an accusation or petition to revoke probation is requested from the Office of the Attorney General, 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. **Completion of Probation**

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

15. **Clinical Diagnostic Evaluation**

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter if required by the Board or its designee, respondent shall undergo, at her own expense, clinical diagnostic evaluation(s) by a practitioner selected or approved prior to the evaluation by the Board or its designee. The approved evaluator shall be provided with a copy of the Board's [accusation, petition to revoke probation, or other pleading] and decision. Respondent shall sign a release authorizing the evaluator to furnish the Board with

a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. If the evaluator recommends restrictions or conditions on respondent's practice, including but not limited to other terms and conditions listed in these guidelines (e.g., required psychotherapy, inpatient treatment, prescription coordination and monitoring, restricted practice), the Board or its designee may by written notice to respondent adopt any such restrictions or conditions as additional probation terms and conditions, violation of which shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

If at any time the approved evaluator or therapist determines that respondent is unable to practice safely or independently, the licensed mental health practitioner shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board or its designee that practice may resume.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

16. Psychotherapy

Within thirty (30) days of the effective date of this decision, respondent shall submit to the Board or its designee, for prior approval, the name and qualifications of a licensed mental health practitioner of her choice. Within thirty (30) days of approval thereof, respondent shall submit documentation to the Board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, she shall notify the Board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement psychotherapist or licensed mental health practitioner of her choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at her own expense, until the therapist recommends in writing to the Board, and the Board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the Board or its designee may require respondent to undergo, at her own expense, a mental health evaluation by a Board-appointed or board-approved psychiatrist or psychologist. If the approved evaluator recommends that respondent continue psychotherapy, the Board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the Board. Respondent shall provide the therapist with a copy of the Board's accusation and decision no later than the first therapy session. She shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning her fitness to practice, progress in treatment, and such other information required by the Board or its designee.

If at any time the treating therapist determines that respondent cannot practice safely or independently, the therapist shall notify the Board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the Board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the Board that practice may be resumed.

During any suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained.

Respondent shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall she manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices or controlled substances. Respondent shall not resume practice until notified by the Board.

During any suspension, respondent shall not engage in any activity that requires the professional judgment of and/or registration as a pharmacy technician. She shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices or controlled substances.

Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

17. Drug and Alcohol Testing

Respondent, at her own expense, shall participate in testing as directed by the Board or its designee for the detection of alcohol, controlled substances, and dangerous drugs and/or dangerous devices. Testing protocols may include biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other testing protocols as directed by the Board or its designee. All testing must be pursuant to an observed testing protocol, unless respondent is informed otherwise in writing by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and frequency of testing will be determined by the Board or its designee.

By no later than thirty (30) days after the effective date of this decision, respondent shall have completed all of the following tasks: enrolled and registered with an approved drug and alcohol testing vendor; provided that vendor with any documentation, and any information necessary for payment by her; commenced testing protocols, including all required contacts with the testing vendor to determine testing date(s); and begun testing. At all times, respondent shall fully cooperate with the testing vendor, and with the Board or its designee, with regard to enrollment, registration, and payment for, and compliance with, testing. Any failure to cooperate timely shall be considered a violation of probation.

Respondent may be required to test on any day, including weekends and holidays. She is required to make daily contact with the testing vendor to determine if a test is required, and if a test is required must submit to testing on the same day.

Prior to any vacation or other period of absence from the area where the approved testing vendor provides services, respondent shall seek and receive approval from the Board or its designee to use an alternate testing vendor to ensure testing can occur. Upon approval, she shall enroll and register with the approved alternate drug testing vendor, provide to that alternate vendor any documentation required by the vendor, including any necessary payment by her. During the period of absence of the area, respondent shall commence testing protocols with the alternate vendor, including required daily contacts with the testing vendor to determine if testing is required, and required testing. Any failure to timely seek or receive approval from the Board or its designee, or to timely enroll and register with, timely commence testing protocols with, or timely undergo testing with, the alternate testing vendor, shall be considered a violation of probation.

Upon detection of an illicit drug, controlled substance or dangerous drug, the Board or its designee may require respondent to timely provide documentation from a licensed practitioner authorized to prescribe the detected substance demonstrating that the substance was administered or ingested pursuant to a legitimate prescription issued as a necessary part of treatment. All such documentation shall be provided by her within ten (10) days of being requested.

Any of the following shall be considered a violation of probation and shall result in respondent being immediately suspended from practice as a pharmacy technician until notified by the Board in writing that she may resume practice: failure to timely complete all of the steps required for enrollment/registration with the drug testing vendor, including making arrangements for payment; failure to timely commence drug testing protocols; failure to contact the drug testing vendor as required to determine testing date(s); failure to test as required; failure to timely supply documentation demonstrating that a detected substance was taken pursuant to a legitimate prescription issued as a necessary part of treatment; and/or detection through testing of alcohol, or of an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment.

In the event of a suspension ordered after detection through testing of alcohol, an illicit drug, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, the Board or its designee shall inform respondent of the suspension and inform her to immediately leave work, and shall notify her employer(s) and work site monitor(s) of the suspension.

During any such suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, third-party-logistics provider, veterinary food-animal drug retailer, or any other distributor of drugs which is licensed by the Board, or any manufacturer, or any area where dangerous drugs and/or dangerous devices or controlled substances are maintained. She shall not practice pharmacy nor do any act involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient consultation; nor shall she manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, distributing, manufacturing or dispensing of dangerous drugs and/or dangerous devices and controlled substances.

During any such suspension, respondent shall not engage in any activity that requires the professional judgment of and/or registration as a pharmacy technician. She shall not direct or control any aspect of the practice of pharmacy, or of the manufacturing, distributing, wholesaling, or retailing of dangerous drugs and/or dangerous devices.

Failure to comply with any such suspension shall be considered a violation of probation. Failure to comply with any requirement or deadline stated by this term shall be considered a violation of probation.

18. **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.

19. **Abstain from Drugs and Alcohol**

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, illicit drugs, dangerous drugs and/or dangerous devices, or their associated paraphernalia, except when possessed or used pursuant to a legitimate prescription issued as a necessary part of treatment. She shall ensure that she is not in the same physical location as individuals who are using illicit substances even if she is not personally ingesting the drugs. Any possession or use of alcohol, dangerous drugs and/or dangerous devices or controlled substances, or their associated paraphernalia for which a legitimate prescription has not been issued as a necessary part of treatment, or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

20. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. She must attend the number of group meetings per week or month directed by the Board or its designee, which shall typically be at least one per week.

Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

DATED: May 14, 2018

DocuSigned by:
Coren D. Wong
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COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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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 Accusation Against:

Case No: 6113

12 **SARINA MARIE RAMIREZ**
13 **902 South Filbert Street**
Stockton, CA 95205

A C C U S A T I O N

14 **Pharmacy Technician Registration No. TCH**
15 **74107**

16 Respondent.

17 Virginia Herold ("Complainant") alleges:

18 **PARTIES**

- 19 1. Complainant brings this Accusation solely in her official capacity as the Executive
20 Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.
21 2. On or about January 26, 2007, the Board issued Pharmacy Technician Registration
22 Number TCH 74107 to Sarina Marie Ramirez ("Respondent"). The registration was in full force
23 and effect at all times relevant to the charges brought herein and will expire on September 30,
24 2018, unless renewed.

25 **JURISDICTION**

- 26 3. Business and Professions Code ("Code") section 4300 provides, in pertinent part, that
27 every license issued by the Board is subject to discipline, including suspension or revocation.
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4. Code section 4300.1 states:

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

STATUTORY PROVISIONS

5. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been 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 to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

....

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

COST RECOVERY

6. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate 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.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Conviction of a Crime)**

5 7. Respondent is subject to discipline pursuant to Code section 4301(l), on the grounds
6 of unprofessional conduct, in that on or about March 1, 2017, in the case of *People v. Sarina*
7 *Marie Ramirez*, (Super. Ct. Sacramento County, 2017, Case No. 17MI002089), Respondent was
8 convicted by the Court on her plea of nolo contendere of violating Vehicle Code section 23152(b)
9 (driving with a blood alcohol level of .08% or higher), a misdemeanor, and an enhancement of
10 Vehicle Code section 23538(b)(2) (having a blood alcohol level of .20% or higher). The
11 circumstances of the crime were that on or about January 24, 2017, Respondent drove a vehicle
12 while having a blood alcohol level of 0.23%. The crime is substantially related to the
13 qualifications, functions, or duties of a pharmacy technician.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Dangerous Use of Alcohol)**

16 8. Respondent is subject to discipline pursuant to Code section 4301(h), on the grounds
17 of unprofessional conduct, in that Respondent consumed alcohol to the extent or in a manner as to
18 be dangerous or injurious to oneself and to the public, in that on or about January 24, 2017,
19 Respondent drove a vehicle with a blood alcohol level of .23%, as more particularly set forth
20 above in paragraph 7.

21 **PRAYER**

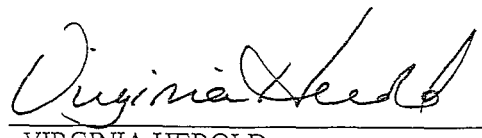
22 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Board of Pharmacy issue a decision:

- 24 1. Revoking or suspending Pharmacy Technician Registration Number TCH 74107,
25 issued to Sarina Marie Ramirez;
- 26 2. Ordering Sarina Marie Ramirez to pay the Board of Pharmacy the reasonable costs of
27 the investigation and enforcement of this case, pursuant to Business and Professions Code section
28 125.3; and,

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

DATED: 10/18/17



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

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