

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

In the Matter of the Accusation Against:

ISMAEL ANGUIANO
Pharmacy Technician Registration
No. TCH 48246,

Respondent.

Case No. 6190

OAH No. 2018021064

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 October 18, 2018.

It is so ORDERED on September 18, 2018.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

A handwritten signature in black ink, appearing to read 'Victor Law', is written over a horizontal line.

By

Victor Law, R.Ph.
Board President

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

In the Matter of the Accusation Against:

ISMAEL ANGUIANO

Pharmacy Technician Registration
No. TCH 48246,

Respondent.

Case No. 6190

OAH No. 2018021064

PROPOSED DECISION

Administrative Law Judge Roy W. Hewitt, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on July 10, 2018.

Deputy Attorney General Desiree I. Kellogg represented complainant, Virginia Herold, Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs, State of California.

Respondent, Ismael Anguiano, represented himself.

The matter was submitted on July 10, 2018.

FACTUAL FINDINGS

1. On September 17, 2003, the board issued to respondent Pharmacy Technician Registration Number TCH 48246. Respondent's registration was in full force and effect at all relevant times.

2. On December 1, 2017, complainant, while acting in her official capacity as the Executive Officer for the board, filed an accusation against respondent. Respondent timely requested a hearing and the instant hearing ensued.

The accusation was based on the criminal convictions set forth in the following Factual Findings.

Respondent's Criminal Convictions

3. On June 27, 2006, in Los Angeles County Superior Court, respondent was convicted of violating California Vehicle Code section 2002, subdivision (a) (hit and run driving), a misdemeanor.

4. On April 10, 2017, in Orange County Superior Court, respondent was convicted of violating California Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol) and 23152, subdivision (b) (driving with a blood alcohol concentration (BAC) of .08 percent or higher), both misdemeanors. Additionally, respondent admitted that his BAC was .20 percent or more, which was a special enhancement.

As a result of the 2017 conviction and admission, respondent was placed on informal probation for a period of five years.

Disciplinary Considerations

5. On June 27, 2008, in Los Angeles County Superior Court, respondent was convicted of violating California Vehicle Code section 23152, subdivision (b) (driving with a BAC of .08 percent or higher¹), a misdemeanor. Respondent admitted a special enhancement based on previous convictions of driving under the influence of alcohol on October 18, 2000, and December 17, 2001. As a result of his 2008 conviction and the enhancement, respondent was placed on summary probation for five years and ordered to complete an 18-month second offender alcohol program.

6. On December 17, 2001, in Los Angeles County Superior Court, respondent was convicted of violating California Vehicle Code section 23152, subdivision (b) (driving with a BAC of .08 percent or higher), a misdemeanor. As a result of that conviction, respondent was placed on summary probation for three years and was required to complete an 18-month alcohol and drug program.

7. On October 18, 2000, in Los Angeles County Superior Court, respondent was convicted of violating California Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), a misdemeanor. As a result of that conviction, respondent was placed on summary probation for three years and was required to complete a three-month first offender alcohol program.

8. On January 30, 2002, in Los Angeles County Superior Court, respondent was convicted of violating California Vehicle Code section 23103, subdivision (a) (reckless driving), a misdemeanor. As a result of that conviction, respondent was placed on summary probation for three years.

¹ Respondent's BAC was determined to be 0.15 percent.

9. In a March 4, 2003, letter to the board, which was submitted in conjunction with his application for licensure, respondent wrote: "I have learned my lessons and have paid for my mistakes. I'm no longer an alcohol drinker." (Exh. 10)

Respondent's Testimony and Documentary Evidence

10. Respondent's testimony is summarized as follows: he is still on probation as a result of his April 10, 2017, DUI conviction²; his 2017 conviction resulted from conduct that took place on February 27, 2017, and respondent claims to "be sober since February 25, 2017"; he asserted that he is not an alcoholic, "I just drank beer on weekends and have never used drugs"; he has had no "relapses since February 27, 2017"; he is not working a 12-Step program; he has no sponsor; "I am not a criminal, I have never had a felony in my life"; "drinking has never affected my job, I was just a weekend drinker"; and, "there are plenty of others in the health care business who drink, it was just never documented."

11. Respondent presented documentary evidence of having attended the following rehabilitation programs: School Ten, Inc.; Face-to-Face; and Self-Help; however given respondent's testimony, it was clear that respondent did not embrace the information he received when he attended the programs.

Character References

12. No one appeared and testified on respondent's behalf, nor did he submit any character reference letters.

Substantial Relationship

13. Board Inspector Christopher Woo testified that respondent's convictions involved conduct substantially related to the qualifications, functions and duties of a pharmacy technician due to the following: technicians must follow laws, regulations and rules governing drugs and controlled substances; technicians must be able to follow rules and regulations; and technicians must use good judgment. Respondent's history of alcohol-related convictions evidences that he would pose a danger to the public if he were to maintain his Pharmacy Technician Registration.

Costs

14. The reasonable costs of the investigation and enforcement of the case against respondent, recoverable by the board pursuant to Business and Professions Code section 125.3, totaled \$2,402.50.

² His probation is due to expire in April of 2022.

LEGAL CONCLUSIONS

1. Causes for discipline exist pursuant to Business and Professions Code sections 490 and 4301, based on respondent's criminal convictions for crimes substantially related to the qualifications, functions and duties of a pharmacy technician and involve act(s) that would be grounds for suspension or revocation of a pharmacy technician's registration.

2. Causes for discipline exist pursuant to Business and Professions Code section 4301 (unprofessional conduct) based on respondent's history of his dangerous use of alcohol. The term "unprofessional conduct" used in a disciplinary statute is not limited to specific enumerated conduct set forth in the statute, but also includes conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession. The term should not be constricted so as to defeat the legislative purpose. (*Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.)

3. Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is presented by sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

4. Since persons under the direct supervision of judicial or correctional authorities are required to behave in exemplary fashion, little weight is generally placed on the fact that such an individual did not commit additional crimes or continue inappropriate behavior while under supervision. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.)

5. The board established guidelines for assessing rehabilitation that are set forth in California Code of Regulations, title 16, section 1769. Pursuant to section 1769, the following criteria are to be used:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Business and Professions Code section 480.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence of rehabilitation submitted by respondent.

The above factors were considered in this case.

Evaluation

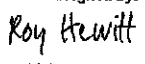
6. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying criminal behavior. One must demonstrate an awareness and understanding that the conduct at issue was wrong and that it was harmful. One must accept responsibility for actions at issue, not blaming them on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgment with sufficient evidence.

In this case it became readily apparent during respondent's testimony that he does not appreciate the gravity of his past misconduct or the fact that he has a problem as a result of consuming alcohol. Until he appreciates the significance of his past misconduct and takes appropriate steps to address his alcoholism, it is not in the best interests of the public to allow him to retain his Pharmacy Technician Registration. Allowing him to remain registered as a pharmacy technician, even on a probationary basis, poses a threat to public safety.

ORDER

1. Respondent Ismael Anguiano's Pharmacy Technician License No. TCH 48246 is revoked.
2. Respondent shall pay to the board \$2,402.50, as cost recovery (See Finding 14).

Dated: July 31, 2018

DocuSigned by:

8225ED47DD7D48A

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings

1 XAVIER BECERRA
Attorney General of California
2 HARINDER KAPUR
Supervising Deputy Attorney General
3 DESIREE I. KELLOGG
Deputy Attorney General
4 State Bar No. 126461
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9429
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

11
12 In the Matter of the Accusation Against:

Case No. 6190

13 **ISMAEL ANGUIANO**
2755 W. Ball Road #4
14 Anaheim, CA 92804

A C C U S A T I O N

15 **Pharmacy Technician Registration**
16 **No. TCH 48246**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about September 17, 2003, the Board issued Pharmacy Technician Registration
24 Number TCH 48246 to Ismael Anguiano (Respondent). The Pharmacy Technician Registration
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 August 31, 2019, unless renewed.

27 ///

28 ///

JURISDICTION

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

4. Section 4300(a) of the Code states "Every license issued may be suspended or revoked."

5. Section 4300.1 of the Code provides, in pertinent part, that the expiration, cancellation, forfeiture, suspension, or voluntary surrender of a Board-issued license or registration shall not deprive the Board of jurisdiction to commence or proceed with a disciplinary proceeding, or to render a decision suspending or revoking the license or registration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

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

8. Section 493 of the Code states:

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

1 As used in this section, "license" includes "certificate," "permit," "authority,"
2 and "registration."

3 9. Section 4301 of the Code states:

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

7 ...

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

13 ...

14 (k) The conviction of more than one misdemeanor or any felony involving the
15 use, consumption, or self-administration of any dangerous drug or alcoholic beverage,
16 or any combination of those substances.

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

23 REGULATORY PROVISIONS

24 10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

25 (b) When considering the suspension or revocation of a facility or a personal
26 license on the ground that the licensee or the registrant has been convicted of a crime,
27 the board, in evaluating the rehabilitation of such person and his present eligibility for
28 a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

1 (2) Total criminal record.

2 (3) The time that has elapsed since commission of the act(s) or offense(s).

3 (4) Whether the licensee has complied with all terms of parole, probation,
4 restitution or any other sanctions lawfully imposed against the licensee.

5 (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

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

11 **COSTS**

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

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(June 27, 2006 Criminal Conviction for Hit & Run Driving on February 9, 2006)**

20 13. Respondent has subjected his registration to discipline under sections 490 and
21 4301(1) of the Code in that he was convicted of a crime that is substantially related to the
22 qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

23 a. On June 27, 2006, in a criminal proceeding entitled *People of the State of*
24 *California v. Ismael Anguiano*, in Los Angeles County Superior Court, case number 6BF01747,
25 Respondent was convicted on his plea of no contest to violating Vehicle Code section 20002(a),
26 hit and run driving, a misdemeanor.

27 ///

b. As a result of the conviction, Respondent was granted summary probation for 24 months, and was ordered to complete a work program, and pay fees, fines and restitution.

SECOND CAUSE FOR DISCIPLINE

(April 10, 2017 Criminal Convictions for DUI on February 25, 2017)

14. Respondent has subjected his registration to discipline under sections 490 and 4301(1) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a pharmacy technician. The circumstances are as follows:

a. On April 10, 2017, in a criminal proceeding entitled *People of the State of California v. Ismael Anguiano*, in Orange County Superior Court, case number 17NM04895, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152(a), driving under the influence of alcohol; and Vehicle Code section 23152(b), driving with a blood alcohol concentration (BAC) of .08 or more, misdemeanors. Respondent admitted, and the court found true the allegation that he was previously convicted of the same offenses within the previous ten years, as described in paragraph 17, below. In his plea agreement, Respondent admitted that his BAC was .20 percent or more.

b. As a result of the conviction, Respondent was granted informal probation for five years, and sentenced to serve 45 days in the Orange County Jail's Supervised Electronic Confinement, with pre-custody credit for one day. Respondent was further ordered to complete an 18-month Multiple Offender Alcohol Program, pay fines, fees and restitution, and comply with the DUI probation terms.

c. The facts that led to the conviction are that at 2:00 a.m., on or about February 25, 2017, patrol officers with the Anaheim Police Department were dispatched to investigate a driver (Respondent) who had fallen asleep in his vehicle in the #1 northbound lane of a major intersection. The officers observed that the vehicle's engine was running, the gear was in "drive," and Respondent's foot was on the brake. An officer opened the driver's side door and immediately detected a strong odor of alcohol on Respondent's breath and body. The officer shook Respondent and woke him up. Respondent attempted to drive off, but the officers pulled him from his vehicle, put him face down on the street, and handcuffed him. While moving

1 Respondent out of the street, the officer observed that Respondent was staggering, and his speech
2 was slurred. Respondent submitted to a series of field sobriety tests which he was unable to
3 complete as explained and demonstrated by the officer. During booking, Respondent provided a
4 sample of blood that was subsequently analyzed with a BAC of .20 percent.

5 **THIRD CAUSE FOR DISCIPLINE**

6 **(Dangerous Use of Alcohol)**

7 15. Respondent has subjected his registration to disciplinary action under section 4301(h)
8 of the Code for unprofessional conduct in that on or about February 25, 2017, as described in
9 paragraph 14, above, Respondent operated a motor vehicle while significantly impaired by
10 alcohol.

11 **DISCIPLINARY CONSIDERATIONS**

12 16. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
13 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
14 June 27, 2008, in Los Angeles County Superior Court, case number 8BF03287, Respondent was
15 convicted on his plea of no contest to violating Vehicle Code section 23152(b), driving with a
16 BAC of .08 or more, a misdemeanor. Pursuant to a plea agreement, the court dismissed an
17 additional count of driving under the influence (Veh. Code, § 23152(a)). Respondent admitted,
18 and the court found true the allegation that he was previously convicted of the same offenses on
19 October 18, 2000 and December 17, 2001. The court assessed Respondent's BAC was .15
20 percent. Respondent was granted summary probation for 60 months, and sentenced to serve 120
21 days in the Los Angeles County Jail, with pre-custody credit for ten days. Respondent was further
22 ordered to complete an 18-month Licensed Second-Offender Alcohol and Other Drug Education
23 and Counseling Program, pay fines and fees, and comply with the DUI probation terms. On
24 March 11, 2010, the Board issued a citation to Respondent for the DUI conviction, and assessed a
25 \$500.00 administrative fine. The citation was completed on November 29, 2010.

26 17. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
27 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
28 October 18, 2000, in Los Angeles County Superior Court, case number 0CM06667, Respondent

1 was convicted of violating Vehicle Code section 23152(a), driving under the influence, a
2 misdemeanor. Respondent was placed on summary probation for three years, ordered to pay
3 applicable fines and fees and to enroll and successfully complete a three month first offender
4 alcohol and other drug education and counseling program.

5 18. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
6 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
7 December 17, 2001, in Los Angeles County Superior Court, case number 1LL05179, Respondent
8 was convicted of violating Vehicle Code section 23152(b), driving with a BAC of .08 percent or
9 more, a misdemeanor. Respondent was placed on summary probation for three years, ordered to
10 pay applicable fines and fees and to enroll and successfully complete a eighteen month alcohol
11 and drug program.

12 19. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
13 to California Code of Regulations, title 16, section 1769, Complainant alleges that on or about
14 January 30, 2002, in Los Angeles County Superior Court, case number 1WL17411, Respondent
15 was convicted of violating Vehicle Code section 23103, subdivision (a), reckless driving, a
16 misdemeanor. An additional count of violating Vehicle Code section 2800.1, subdivision (a),
17 evading a police officer, was dismissed. Respondent was sentenced to pay applicable fines and
18 fees, perform twenty days of Cal Trans work and placed on summary probation for 36 months.

19 20. To determine the degree of discipline, if any, to be imposed on Respondent, pursuant
20 to California Code of Regulations, title 16, section 1769, Complainant alleges that in a letter from
21 Respondent dated March 4, 2003, which was submitted in conjunction with his application for
22 licensure, he stated: "I have learned my lessons and have paid for my mistakes. I'm no longer an
23 alcohol drinker."

24 ///

25 ///

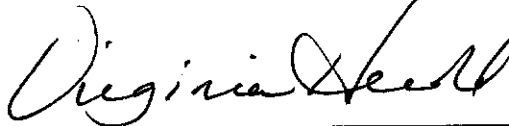
26 ///

1 PRAYER

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

- 4 1. Revoking or suspending Pharmacy Technician Registration Number TCH 48246,
5 issued to Ismael Anguiano;
6 2. Ordering Ismael Anguiano to pay the Board of Pharmacy the reasonable costs of the
7 investigation and enforcement of this case, pursuant to Business and Professions Code section
8 125.3; and,
9 3. Taking such other and further action as deemed necessary and proper.

10
11 DATED: 12/1/17



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

12
13
14
15 SD2017705443
16 81737181.doc
17
18
19
20
21
22
23
24
25
26
27
28