

1 KAMALA D. HARRIS
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2141
7 Facsimile: (619) 645-2061
Attorneys for Complainant
8

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

12 In the Matter of the Accusation Against:	Case No. 4473
13 HOJIN LEE	A C C U S A T I O N
14 6230 Roanoke Street	
15 San Diego, CA 92139	
16 Pharmacy Technician Registration	
17 No. TCH 44606	
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, Department of Consumer Affairs.
- 23 2. On or about October 7, 2002, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 44606 to Hojin Lee (Respondent). The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought herein and
26 will expire on December 31, 2013, unless renewed.

27 ///
28 ///

1 **JURISDICTION**

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

5 4. Section 4300, subdivision (a) of the Code states that every license issued may be
6 suspended or revoked.

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

11 **STATUTORY PROVISIONS**

12 6. Section 482 of the Code states:

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

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

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

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

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

23 8. Section 493 of the Code states:

24 Notwithstanding any other provision of law, in a proceeding conducted by a
25 board within the department pursuant to law to deny an application for a license or to
26 suspend or revoke a license or otherwise take disciplinary action against a person who
27 holds a license, upon the ground that the applicant or the licensee has been convicted
28 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 procured by fraud or
6 misrepresentation or issued by mistake. Unprofessional conduct shall include, but is
7 not limited to, any of the following:

8

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

14

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

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1769, states:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

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

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, 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 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.

FIRST CAUSE FOR DISCIPLINE

(May 7, 2012 Criminal Conviction for Exhibiting a Deadly Weapon on April 6, 2012)

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

a. On or about May 7, 2012, in a criminal proceeding entitled *People of the State of California v. Hojin Lee*, in San Diego County Superior Court, case number M148111, Respondent was convicted on his plea of guilty to violating Penal Code section 417, subdivision (a)(1), exhibiting a deadly weapon other than a firearm, to wit, a knife, a misdemeanor. The court dismissed additional counts of assault with a deadly weapon (Pen. Code, § 245(a)(1)), carrying a switchblade knife (Pen. Code, § 21510(b)), and a second count of exhibiting a deadly weapon (Pen. Code, § 417(a)(1)), pursuant to a plea agreement.

b. As a result of the conviction, on or about May 7, 2012, Respondent was granted three years summary probation, and ordered to pay fees and fines, submit to a Fourth Amendment waiver, and comply with probation.

c. The facts that led to the conviction are that on or about the evening of April 6, 2012, officers from the San Diego Police Department responded to a report of an assault with a

1 deadly weapon (knife) outside of a restaurant. According to witness statements, Respondent was
2 heavily intoxicated when he left the restaurant. Respondent put his arm around a woman in the
3 parking lot and made a derogatory remark. The woman's boyfriend took offense and asked
4 Respondent to repeat what he had said. Respondent went to his vehicle and armed himself with a
5 knife; he approached the couple and threatened to stab the male party. Another male pushed
6 Respondent in an attempt to divert Respondent's attention away from the couple. Respondent
7 chased the second male with the knife for a distance, then returned and continued threatening the
8 couple. The second male threw a brick at Respondent after Respondent ran at him again with the
9 knife. Respondent was knocked unconscious. The restaurant manager went out to the parking lot
10 and took possession of the knife. As Respondent was regaining consciousness, the manager
11 attempted to help him. Respondent became combative and punched the restaurant manager in the
12 stomach. Respondent was hit twice again by the second male in an attempt to keep Respondent
13 on the ground. When officers arrived, Respondent was conscious and squatting in the
14 restaurant's parking lot, bleeding from the left side of his head. There was a strong odor of an
15 alcoholic beverage on Respondent's breath. Respondent stated that he could not remember
16 anything. Due to Respondent's injuries, medics transported him to the emergency room where
17 Respondent was given x-rays and a CAT scan. Respondent had sustained lacerations to his face
18 and head, and a two-centimeter laceration to the right side of his head that required stitches. After
19 being cleared, the police officer questioned Respondent at his hospital bed. Respondent became
20 abusive towards the hospital staff. Respondent told the officer that he did not remember anything
21 about the assault. Four days later, Respondent admitted to a detective that he had been drinking
22 in excess, that it was not rare that he would completely black out and do stupid things, and that he
23 had been advised by his physician not to mix alcoholic beverages with prescription medications.

SECOND CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol)

26 13. Respondent has subjected his registration to discipline under section 4301,
27 subdivision (h) of the Code in that on or about April 6, 2012, he used alcohol in a manner as to be
28 dangerous and injurious to himself and to others, as described in paragraph 12, above.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

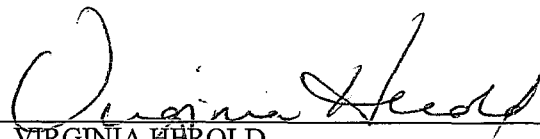
PRAYER

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 44606, issued to Hojin Lee;
2. Ordering Hojin Lee 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:

6/12/13



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

SD2012704354