

1 KAMALA D. HARRIS  
Attorney General of California  
2 ALFREDO TERRAZAS  
Senior Assistant Attorney General  
3 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
4 State Bar No. 132645  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
P.O. Box 85266  
6 San Diego, CA 92186-5266  
Telephone: (619) 645-2610  
7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4719

12 **RIAN ROBERT HOOVER**  
13 **7235 Charmant Drive, #826**  
14 **San Diego, CA 92122**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 107183**

Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 16, 2011, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 107183 to Rian Robert Hoover (Respondent). The Pharmacy  
24 Technician Registration was in full force and effect at all times relevant to the charges brought  
25 herein and will expire on June 30, 2014, unless renewed.

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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 unless otherwise indicated.

5 4. Section 4300(a) of the Code states that “[e]very license issued may be suspended or  
6 revoked.”

7 5. Section 4300.1 states:

8 The expiration, cancellation, forfeiture, or suspension of a board-issued  
9 license by operation of law or by order or decision of the board or a court of law, the  
10 placement of a license on a retired status, or the voluntary surrender of a license by a  
11 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.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states:

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

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

17 (b) Considering suspension or revocation of a license under Section 490.  
18 Each board shall take into account all competent evidence of rehabilitation  
19 furnished by the applicant or licensee.

20 7. Section 490 of the Code states:

21 (a) In addition to any other action that a board is permitted to take against  
22 a licensee, a board may suspend or revoke a license on the ground that the licensee  
23 has been convicted of a crime, if the crime is substantially related to the  
24 qualifications, functions, or duties of the business or profession for which the  
license was issued.

25 (b) Notwithstanding any other provision of law, a board may exercise any  
26 authority to discipline a licensee for conviction of a crime that is independent of  
27 the authority granted under subdivision (a) only if the crime is substantially related  
28 to the qualifications, functions, or duties of the business or profession for which the  
licensee’s license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of  
guilty or a conviction following a plea of nolo contendere. Any action that a board is  
permitted to take following the establishment of a conviction may be taken when the  
time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,

1 or when an order granting probation is made suspending the imposition of sentence,  
2 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
3 Code.

4 (d) The Legislature hereby finds and declares that the application of this  
5 section has been made unclear by the holding in *Petropoulos v. Department of*  
6 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed  
7 a significant number of statutes and regulations in question, resulting in potential  
8 harm to the consumers of California from licensees who have been convicted of  
9 crimes. Therefore, the Legislature finds and declares that this section establishes an  
10 independent basis for a board to impose discipline upon a licensee, and that the amendments  
11 to this section made by Senate Bill 797 of the 2007-2008 Regular  
12 Session.

13 8. Section 493 of the Code states:

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

24 9. Section 4301 of the Code states:

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

.....

(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

1 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her  
2 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.

3 . . . .

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

8 . . . .

### 9 REGULATORY PROVISIONS

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

11 . . . .

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

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

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

23 For the purpose of denial, suspension, or revocation of a personal or facility license  
24 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions  
25 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  
26 registration in a manner consistent with the public health, safety, or welfare.

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1 **COST RECOVERY**

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

8 **CAUSE FOR DISCIPLINE**

9 **(February 15, 2013 Criminal Conviction for Assault With a Semi-Automatic Firearm**  
10 **and for Drawing or Exhibiting Firearm in Presence of Motor Vehicle Occupant on**  
11 **September 8, 2012 )**

12 13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision  
13 (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications,  
14 duties and functions of a pharmacy technician. The circumstances are as follows:

15 14. On or about February 15, 2013, in a criminal proceeding entitled *People of the State of*  
16 *California v. Rian R. Hoover*, in the Superior Court of California, County of San Diego, Central  
17 Division, in Case No. SCD243175, Respondent was convicted on his plea of guilty of violating  
18 Penal Code sections 245(b) (assault with semi-automatic firearm) and 417.3 (drawing or exhibiting  
19 firearm in presence of motor vehicle occupant), felonies. As a result of a plea agreement, a count  
20 for violating Penal Code section 25850(a) (carrying a loaded firearm on one's person) was  
21 dismissed.

22 15. As a result of the conviction, Respondent was placed on two years probation and  
23 ordered to serve 90 days in a work furlough program. The plea agreement also included that after  
24 successful completion of the two years probation, the Court would allow Respondent to withdraw  
25 his plea as to count one (Penal Code section 245(b)) and that charge would be dismissed.

26 16. The circumstances that led to the conviction are that on September 8, 2012, at  
27 approximately 12:00 a.m., San Diego Police Department Officers responded to a report of a road  
28 rage incident involving a silver Dodge and another vehicle in the area of 4300 La Jolla Village

1 Drive. The reporting party (RP) told dispatch that the driver of the silver Dodge had brandished a  
2 firearm and pointed it at the RP.

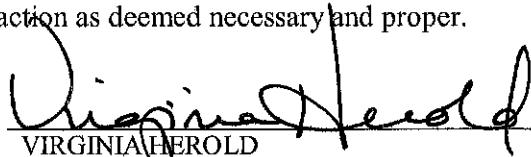
3 17. While en route, the officers observed the suspect vehicle pulling into the underground  
4 garage at 7235 Charmant Drive, San Diego, California. The officers stopped the vehicle in the  
5 underground garage and detained the occupant (Respondent). The RP was brought to the scene  
6 and the RP positively identified Respondent as the person who had pointed a firearm at him.  
7 Officers found a black semi-automatic Hi-Point firearm under the driver's seat of Respondent's  
8 vehicle. Respondent was arrested and transported to the county jail where he was booked.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107183  
13 issued to Rian Robert Hoover;
- 14 2. Ordering Rian Robert Hoover to pay the Board of Pharmacy the reasonable costs of  
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section  
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 10/21/13



19 VIRGINIA HEROLD  
20 Executive Officer  
21 Board of Pharmacy  
22 Department of Consumer Affairs  
23 State of California  
24 Complainant

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