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

In the Matter of the Petition to Revoke Probation Against: **ANTHONY KEVIN CROSBY** **2126 Lincoln Avenue** **Richmond, CA 94801** **Pharmacy Technician License No. TCH 80457** Respondent.	Case No. 4751 **PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as Executive Officer, Board of Pharmacy, Department of Consumer Affairs.

2. On or about April 21, 2010, pursuant to a Decision and Order resolving the Statement of Issues in Board of Pharmacy Case No. 3383, the Board of Pharmacy issued Pharmacy Technician License Number TCH 80457 to Anthony Kevin Crosby (Respondent). The Pharmacy Technician License expired on June 30, 2013, and has not been renewed. Pursuant to the terms of the Decision and Order issuing the License, Respondent's License has been suspended since its issuance on April 21, 2010 due to his failure to submit adequate proof of technician certification.

3. In a prior disciplinary action entitled "In the Matter of Statement of Issues Against Anthony Kevin Crosby," Case No. 3383, the Board of Pharmacy issued a Decision and Order, effective April 21, 2010, which ordered Respondent's application for a pharmacy technician license denied, but which also ordered that, upon satisfaction by Respondent of all statutory and regulatory requirements for licensure, a pharmacy technician license would issue to Respondent and be immediately revoked, with the revocation stayed in favor of a period of probation of four (4) years, on specified terms and conditions of probation. A copy of that decision is attached as exhibit A and is incorporated herein by reference.

JURISDICTION AND STATUTORY PROVISIONS

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

5. Section 4011 of the Code provides that the Board shall administer and enforce both the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances Act [Health & Safety Code, § 11000 et seq.].

6. Section 4300(a) of the Code provides that every license issued by the Board may be suspended or revoked.

7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or suspension of a Board-issued license, 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.

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Comply With Certification Requirement)

8. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 1 of that Order required that Respondent be suspended from working as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board. Respondent has never submitted satisfactory proof of certification to the Board, and as a result his license has remained in suspended status since the onset of probation. This failure to submit satisfactory proof of certification subjects Respondent's License to revocation.\

SECOND CAUSE TO REVOKE PROBATION

(Failure to Submit Timely or Compliant Quarterly Report(s))

9. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 3 of that Order required that Respondent report to the Board quarterly, in person or in writing, as directed, and that in each of these reports Respondent state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Respondent only intermittently submitted reports to the Board, did so with a non-compliant format or content, and failed to submit any quarterly report at all after the last such report submitted in or about January 2012. This failure to timely submit compliant quarterly reports subjects Respondent's License to revocation.

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THIRD CAUSE TO REVOKE PROBATION

(Failure to Timely Pay Probation Monitoring Cost(s))

10. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 7 of that Order required that Respondent pay to the Board the costs associated with probation monitoring as determined by the Board each and every year of probation, at the conclusion of each year of probation. Respondent failed to timely pay the costs of probation monitoring for the 2010/2011 and 2011/2012 probation years, when noticed by the Board. This failure to timely make payment of probation monitoring costs as directed subjects Respondent's License to revocation.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Maintain Current and Active Status of License)

11. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 8 of that Order required that Respondent shall, at all times while on probation, maintain an active, current, pharmacy technician license with the Board. Respondent failed to do so, as among other things his license has been expired since June 30, 2013, without renewal. This failure to maintain current and active licensure as a pharmacy technician subjects Respondent's License to revocation.

FIFTH CAUSE TO REVOKE PROBATION

(Failure to Meet Technician Employment Requirement(s))

12. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 10 of that Order provided that it would be a violation of probation for Respondent to work less than the number of hours that the Board requires that he work per month as a pharmacy technician. That threshold was set at forty (40) hours per month. Respondent has never reported working as a pharmacy technician since the start of probation (and has in fact been suspended from practice for that entire time). This failure to report employment as a pharmacy technician subjects Respondent's License to revocation.

OTHER MATTERS – EXTENSION OF PROBATION

13. At all times after the effective date (April 21, 2010) of the Decision and Order imposing probation on Respondent's License, Term and Condition 11 of that Order provided:

> **11. Violation of Probation.**
> If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.
> If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and 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.

14. Pursuant to the operation of Term and Condition 11 of the probation order applicable to Respondent's License, probation is automatically extended by the filing hereof, and/or by Respondent's failure to comply with the terms and conditions of probation, until such time as this Petition to Revoke Probation is heard and decided, or until the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation.

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 the probation that was granted by the Board of Pharmacy in Case No. 3383 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 80457 issued to Anthony Kevin Crosby (Respondent);

2. Revoking or suspending Pharmacy Technician License No. TCH 80457, issued to Anthony Kevin Crosby (Respondent);

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

DATED: 12/12/13

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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3383

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

In the Matter of the Statement of Issues Against: **ANTHONY KEVIN CROSBY** 2126 Lincoln Avenue Richmond, CA 94801 Respondent.	Case No. 3383

DECISION AND ORDER

The Proposed Decision is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 21, 2010.

It is so ORDERED on March 22, 2010.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By Kenneth H. Schell

KENNETH H. SCHELL
Board President

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

In the Matter of the Statement of Issues Against: ANTHONY KEVIN CROSBY Richmond, California Applicant for Pharmacy Technician Registration, Respondent.	Case No. 3383 OAH No. 2009110245

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on December 23, 2009.

Joshua A. Room, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Anthony Kevin Crosby represented himself.

The record was left open until December 30, 2009, to allow Respondent to submit a copy of a Penal Code section 1203.4 order. The order was timely received (Solano County Case No. VC80144; Finding 3) and admitted into evidence as Exhibit D.

The record closed on December 30, 2009.

FACTUAL FINDINGS

1. Complainant Virginia Herold filed the Statement of Issues in her official capacity as Executive Officer of the California Board of Pharmacy (Board).

2. On December 4, 2007, the Board received an application for registration as a Pharmacy Technician from Anthony Kevin Crosby (Respondent). On June 3, 2008, the

Board denied the application because of Respondent's criminal conviction record. Respondent appealed the denial and this hearing followed.

Criminal Conviction History

3. On September 23, 1988, in the Solano County Municipal Court, Respondent was convicted, by his plea of nolo contendere, of four misdemeanor Penal Code violations: section 470, forgery; section 532, subdivision (a), false financial statement; section 12025, subdivision (a), carrying concealed firearm; and section 12031, subdivision (a), carrying loaded firearm in public. The gun was confiscated and a fine imposed. On December 29, 2008, the Court ordered the case dismissed pursuant to Penal Code section 1203.4.

This conviction resulted from Respondent's arrest on September 2, 1988, following his attempt to rent an apartment using another person's name and information while possessing a loaded and concealed firearm.

4. On May 24, 1990, in the Contra Costa County Municipal Court, Respondent was convicted, by his plea of no contest, of two misdemeanor Penal Code violations: section 12025, subdivision (a), carrying concealed firearm; and section 12031, subdivision (a), carrying loaded firearm in public. Respondent was sentenced to serve four days in the county jail and to pay fines and fees.

This conviction resulted from Respondent's arrest on December 7, 1988, after a loaded firearm was found in his vehicle.

5. On October 15, 1990, in the Alameda County Superior Court, Respondent was convicted of a felony violation of Penal Code section 245, subdivision (a)(1), assault with a deadly weapon other than a firearm with force likely to produce great bodily injury. Respondent was placed on probation for three years pursuant to numerous terms and conditions, including that he stay away from the victim and pay fines and fees.

This conviction resulted from Respondent's arrest on June 30, 1990. The police report states that Respondent and an accomplice forced their way into an apartment and threatened and assaulted its occupants with a gun and a baseball bat.

6. On June 29, 1992, in the Alameda County Superior Court, Respondent was convicted, by his plea of nolo contendere, of a felony violation of Penal Code section 243, subdivision (c), battery on a public officer. Respondent was placed on probation for three years pursuant to numerous terms and conditions, including that he pay restitution, fines and fees.

This conviction resulted from Respondent's arrest on November 2, 1991. The police report states that Respondent physically resisted and battered several officers who were attempting to detain and question him about his role in an altercation at a nightclub.

7. On September 8, 1993, in the Contra Costa County Superior Court, Respondent was convicted, by jury verdict, of a felony violation of Vehicle Code section 23103, reckless driving; a felony violation of Vehicle Code section 2800.2, evading a peace officer; and a misdemeanor violation of Penal Code section 148, subdivision (a)(1), obstructing or resisting a peace officer. Respondent's sentence included a suspended 16-month state prison term, and orders to pay restitution and to participate in drug counseling.

This conviction resulted from Respondent's arrest on February 6, 1993. The police report states that Respondent threatened another driver with a gun and then evaded police.

8. On February 9, 1998, in the Solano County Superior Court, Respondent was convicted of a felony violation of Vehicle Code section 2800.2, evading a peace officer; a felony violation of Vehicle Code section 19851, subdivision (a), stealing a vehicle; and a felony violation of Penal Code section 245, subdivision (c), assault on a peace officer with a deadly weapon. Respondent was sentenced to state prison for seven years and four months, but this sentence was suspended and he was placed on probation for five years. The terms and conditions of probation included serving one year in the county jail, payment of restitution, numerous drug and alcohol conditions, and steady employment. In addition, Respondent was ordered to stay away from female minors and from schools.

This conviction resulted from Respondent's arrest on December 6, 1996. The police report states that Respondent attempted to entice a teenage girl into his car with money, fled from responding police officers, fought with the officers, drove a police vehicle onto a sidewalk/front lawn, tried to back the vehicle up to hit the officers, and left the vehicle disabled.

9. Solano County court minute orders reflect that Respondent was charged with violating probation in the 1998 case in 2000. The last minute order in the record, dated June 23, 2000, states that the matter was continued until August 11, 2000, to set a hearing. Respondent confirms that he did violate probation and was committed to state prison in 2001. He served two years and eight months and was released on parole in April 2004.

Respondent's Evidence

10. Respondent acknowledges that he did "horrific things in the past." He is ashamed of his criminal history, which he attributes to the use of alcohol and drugs as well as difficult upbringing in poor neighborhoods replete with crime. Respondent had family members who were murdered; he was "out of control" and did not care about anything.

Respondent only vaguely remembers most of the crimes, but does not contest the accuracy of the court records and police reports. Asked specifically about the 1990 assault conviction, Respondent explained that he was "trying to play the hero" and confront

someone who had allegedly stolen a friend's credit cards. The situation got out of hand and Respondent assaulted the victim.

11. Respondent testified that, since his release from prison, he has "turned my life around 180 degrees." Prison was a vehicle that helped him decide on sobriety for the sake of his children. He has been sober since he was committed to state prison. Respondent's boys are now ages 12, 19 and 21. He is committed to being a positive role model for them. Respondent currently resides with his mother and two of his sons. Since his release from prison he has actively pursued education and training to enable him to obtain secure employment.

12. Respondent's father was a pharmacist in Los Angeles and this prompted Respondent's interest in pharmacy. He completed the Pharmacy Technician Program at Western Career College in 1990. Respondent was successfully employed at San Francisco General Hospital as a pharmacy helper from approximately 1996 until 1998.

13. Respondent recently completed the Process Technology Certificate Program at Los Medanos College. That program prepares students to work as a process technician, or plant operator, in the chemical and refining industries. In addition, he has taken courses at the Berkeley Adult School WorkAbility II Program through the Department of Rehabilitation. Respondent would like to work in a pharmaceutical plant where he could use both his process technology and his pharmacy skills.

14. Respondent does volunteer work through the North Richmond Baptist Church. He also volunteers with the Boys and Girls Club in El Sobrante, where his boys attend.

15. Respondent testified in a forthcoming and straightforward manner consistent with credibility.

16. Respondent submitted ten reference letters, all dated in September, October or November 2009.

A. Bob Brown has known Respondent as a friend for 22 years. He describes Respondent as "a man of great integrity and honor, an activist and role model in his community."

B. Julie Harrell has known Respondent for three years. She observes that he has made bad choices in his past, but has been working to better his life.

C. Darnell Earl is a Court Clerk with the San Francisco Superior Court and has known Respondent for 20 years. Sine Respondent's release from prison, Earl has seen a change in Respondent's behavior for the better.

D. Daniel R. Reamon is an Employment Specialist and Kenneth L. Booker is a Program Manager with the Berkeley Adult School. They write that Respondent has been a client since May 2009; that they feel strongly that Respondent is fully committed to his rehabilitation; that he has fulfilled all of the tasks that were required within the time allotted; and that Respondent "has impressed us as forthright and sincere in all of our interactions."

E. Areda F. Boyd has known Respondent for over two years in both personal and professional capacities. She feels that he has matured and learned from his past, and is honest, trustworthy and dedicated.

F. Angela R. Carpenter is a Case Administrator with the Office of the State Bar Court and has known Respondent for many years. She is aware of Respondent's past, but believes that he "recognizes and accepts the mistakes he made and is trying to rectify his past by living a decent life as well as being a good role model for his children."

G. Charlene M. McKoy is the Director of Client Services for Heartfelt Imagez and Design. She has known Respondent "for over 30 years and [has] witnessed both his personal struggles as well as his accomplishments." Respondent "has proven in my opinion to have put the past behind [him] and become what is considered [to be] a model citizen." Further, McKoy writes that she has observed Respondent "raise three outstanding sons who themselves are model students and citizens; serve as mentor and guardian for his deceased brother's son" and to volunteer in the community when there is a need.

H. Kenneth Cole is Design Compliance and Services Supervisor for Tesoro Refining and Marketing Company in Martinez. He is an instructor in the Process Technology Program and Respondent was his student in that program. Cole wrote a general letter of recommendation for Respondent.

I. Andrew Linan has been friends with Respondent since high school. He is aware of Respondent's past and believes that he has learned from his mistakes.

J. Steve Chmielowski has known Respondent since 1977. Although Respondent has had a troubled past, he is convinced that Respondent is now "dedicated to move forward with his life," including motivating his children by serving as a role model.

LEGAL CONCLUSIONS

1. Cause for denial of registration exists pursuant to Business and Professions Code section 480, subdivisions (a)(1) and (a)(3), and Business and Professions Code section 4300, subdivision (c), as that section interacts with section 4301, subdivision (l), by reason of Respondent's convictions of crimes that are substantially related to the qualifications, functions or duties of a pharmacy technician (Findings 3 through 8).

2. Cause for denial of registration exists pursuant to Business and Professions Code section 480, subdivision (a)(3), and Business and Professions Code section 4300, subdivision (c), as that section interacts with section 4301, subdivision (f), by reason of Respondent's conduct that involved moral turpitude, dishonesty, fraud, deceit, or corruption (Findings 3 through 8).

3. As cause to deny registration exists based upon Respondent's criminal record, it must next be determined whether he has demonstrated rehabilitation. In California Code of Regulations, title 16, section 1769, the Board has set forth the following criteria for rehabilitation when considering the denial of registration as a pharmacy technician:

> (1) The nature and severity of the acts or offenses under consideration as grounds for denial.
>
> (2) Evidence of any acts committed subsequent to the acts or crimes under consideration as grounds for denial under Section 480 of the Business and Professions Code.
>
> (3) The time that has elapsed since commission of the acts or crimes 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, if any, of rehabilitation submitted by the applicant.

Discussion

4. Respondent has a lengthy history of serious criminal activity. It is concluded, however, that he has demonstrated sufficient rehabilitation to warrant registration as a pharmacy technician on a probationary basis. It has been almost six years since Respondent was released from state prison. Since that time he has pursued educational opportunities and actively sought to be a good father to his sons. Respondent credibly testified that he has made a complete turnaround in his life, an assertion that was corroborated by numerous character reference letters. The public interest will be sufficiently protected by the issuance of a probationary registration under terms and conditions that include a requirement that he abstain from the use of alcohol and drugs unless prescribed.

ORDER

The application of Respondent Anthony Kevin Crosby for the issuance of a pharmacy technician registration is denied. However, Respondent shall be issued a probationary license, upon satisfaction of the following: Respondent shall first meet all statutory and regulatory requirements for the issuance of a pharmacy technician registration. Following

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BOARD OF REGISTERED NURSING

the satisfaction of this condition, Respondent's license shall be issued and immediately revoked, the order of revocation stayed, and Respondent placed on probation for a period of four years on the following terms and conditions:

1. Certification Prior to Resuming Work. Respondent shall be suspended from working as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

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

   Subject to the above restrictions, Respondent may continue to own or hold an interest in any entity licensed by the Board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

2. Obey All Laws. Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

3. Reporting to the Board. Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

4. Interview with the Board. Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at a location to be determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

5. Cooperation with Board Staff. Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his probation. Failure to comply shall be considered a violation of probation.

6. Notice to Employers. Respondent shall notify all present and prospective employers of the decision in case number 3383, and the terms, conditions and restrictions imposed on Respondent by the decision. Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case number 3383.

   If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 3383 in advance of Respondent commencing work at each pharmacy.

   "Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether Respondent is considered an employee or independent contractor.

7. Probation Monitoring Costs. Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

8. Status of License. Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the Board, including any period during which suspension or probation is tolled.

   If Respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. Notification of Employment/Mailing Address Change. Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule, if known. Respondent shall notify the Board in writing within 10 days of a change in name, mailing address or phone number.

10. Tolling of Probation. It is a violation of probation for Respondent to work less than the number of hours that the Board requires that he work per month as a pharmacy technician/exemptee. Should Respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, Respondent must notify the Board in writing within 10 days of

cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

"Cessation of practice" means any period of time exceeding 30 days in which respondent is not engaged in the practice of a pharmacy technician as defined in the Business and Professions Code.

11. Violation of Probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order which was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and 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 which was stayed.

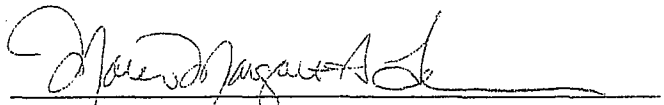
12. Completion of Probation. Upon successful completion of probation, Respondent's technician registration will be fully restored.

13. License 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, Respondent may tender his license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

Upon acceptance of the surrender, Respondent shall relinquish his pocket license to the Board within 10 days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license from the Board for three years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

14. Abstain from Drugs and Alcohol Use. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of Respondent.

DATED: January 26, 2010



MARY-MARGARET ANDERSON
Administrative Law Judge
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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against: **ANTHONY KEVIN CROSBY** **2126 Lincoln Avenue** **Richmond, CA 94801** **Applicant for Pharmacy Technician License** Respondent.	Case No. 3383 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about December 4, 2007, the Board of Pharmacy, Department of Consumer Affairs, received an Application for Registration as a Pharmacy Technician from Anthony Kevin Crosby (Respondent). On or about December 1, 2007, Anthony Kevin Crosby certified under penalty of perjury the truthfulness and accuracy of all statements, answers, and representations in the Application. The Board denied the Application on or about June 3, 2008.

JURISDICTION

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

STATUTORY PROVISIONS

4. Section 4300, subdivision (c), of the Code states:

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy . . . ."

5. Section 4301 of the Code provides, in pertinent part, that "unprofessional conduct" is defined to include, but not be limited to, any of the following:

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

((l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

6. Section 480 of the Code states, in pertinent part:

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

"(1) Been convicted of a crime. . . . Any action which a board is permitted to take following the establishment of a conviction may be taken . . . irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

"(3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the . . . [license]."

. . .

"(c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application . . . ."

7. 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."

FACTUAL/PROCEDURAL BACKGROUND

8. On or about September 2, 1988, Respondent was arrested by Benicia Police following his attempt to rent an apartment using another person's name and information, while possessing a loaded concealed firearm. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 80144 in Solano County Municipal Court (Vallejo-Benicia Judicial District), with violating (1) Penal Code section 470 (Forgery), (2) Penal Code section 532, subdivision (a) (False Financial Statement), (3) Penal Code section 12025, subdivision (a) (Carrying Concealed Firearm), and (4) Penal Code section 12031, subdivision (a) (Carrying Loaded Firearm in Public), all misdemeanors. On or about September 23, 1988, Respondent pleaded *nolo contendere* to and was convicted of all four (4) misdemeanors. The gun was confiscated, and a fine was imposed.

9. On or about December 7, 1988, Respondent was arrested by Richmond Police after a vehicle in his possession was detained on suspicion of drug activity and was found to contain a firearm. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 902140-3 in Contra Costa County Municipal Court (Bay Judicial District), with violating (1) Penal Code section 12025, subdivision (a) (Carrying Concealed Firearm), and (2) Penal Code section 12031, subdivision (a) (Carrying Loaded Firearm in Public), both misdemeanors. On or about May 24, 1990, Respondent was convicted of both charges, and sentenced to 120 days in county jail (or home detention). The sentence was subsequently reduced to 90 days in jail, and was eventually reduced to 4 days in jail. Respondent was also ordered to pay fines and fees.

10. On or about June 30, 1990, Respondent was arrested by Berkeley Police after he and an accomplice broke into an apartment and threatened and assaulted its occupants with a gun and a baseball bat. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 103678A in Alameda County Superior Court, with violating (1) Penal Code section 459 (Burglary), (1a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), (2) Penal Code section 211 (Robbery), (2a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), (3) Penal Code section 245, subdivision (a)(1) (Assault with Deadly Weapon Other Than Firearm By Means of Force Likely to Produce Great Bodily Injury), and (3a) Penal Code section 12022.5 (Use of Firearm in Commission of Felony), all felonies. On or about October 15, 1990, Respondent was convicted of violating Penal Code section 245, subdivision (a)(1) (Assault with Deadly Weapon Other Than Firearm By Means of Force Likely to Produce Great Bodily Injury), a felony. Imposition of sentence was suspended in favor of a period of probation of three (3) years, on terms and conditions including time served, a stay-away order, and fines and fees.

11. On or about November 2, 1991, Respondent was arrested by Alameda Police after he physically resisted and battered several officers who were attempted to detain and question him about his role in an altercation in a nearby bar/club. Among other things, Respondent bit one or more officers. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 54649 in Alameda County Municipal Court (Alameda Judicial District), with violating (1) Health and Safety Code section 11350, subdivision (a) (Possession of Controlled Substance – cocaine), (2) Penal Code section 243, subdivision (d) (Battery Causing Serious Bodily Injury – Upper Inner Thigh), (3) Penal Code section 243, subdivision (d) (Battery Causing Serious Bodily Injury – Major Damage to Knee), and (3a) Penal Code section 12022.7 (Infliction of Great Bodily Injury During Commission of a Felony), all felonies. The case was subsequently transferred to the Superior Court and given Case No. 111482. On or about June 29, 1992, Respondent pleaded *nolo contendere* to and was convicted of the (substituted) charge of violating Penal Code section 243, subdivision (c) (Battery on a Public (Non-Peace) Officer), a felony. Imposition of sentence was suspended in favor of a period of probation of three (3) years, on terms and conditions including time served, HIV testing, restitution, and fines and fees.

12. On or about February 6, 1993, Respondent was arrested by Richmond Police after he threatened another driver with a gun, and led police on a vehicular chase. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. 931246-3 in Contra Costa County Superior Court, with violating (1) Penal Code section 245, subdivision (a)(2) (Assault on Person of Another With Firearm), a felony, (2) Vehicle Code section 23103 (Reckless Driving), a felony, (3) Penal Code section 148, subdivision (a)(1) (Obstructing/Resisting Peace Officer), a misdemeanor, (4) Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, and (5) Penal Code section 12021, subdivision (a) (Convicted Felon/Addict in Possession of Firearm), a felony. On or about October 22, 1993, Respondent was convicted (following trial) of violating Vehicle Code section 23103 (Reckless Driving), a felony, Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, and Penal Code section 148, subdivision (a)(1) (Obstructing/Resisting Peace Officer), a misdemeanor. Respondent was given a sentence including sixteen (16) months in prison, a restitution fine, and drug counseling.

13. On or about December 6, 1996, Respondent was arrested by Fairfield Police after an incident in which he: allegedly tried to entice a teenage girl (under 18) into his car with money; fled in his car from police officers responding to a report of this conduct and led them on a chase; fought with officers after they got him out of his car; and got into one of the police vehicles and drove it onto a sidewalk/front lawn, tried to back it up into the police officers, and left it disabled. He was subsequently charged, in a case titled *People v. Anthony Kevin Crosby*, Case No. C43126 in Solano County Municipal Court (Northern Solano Judicial District) with violating (1) Penal Code 647.6 (Annoy/Molest Child Under 18), a misdemeanor, (2) Vehicle Code section 2800.2 (Evading Peace Officer With Disregard for Safety), a felony, (3) Vehicle Code section 10851, subdivision (a) (Driving or Taking Vehicle Without Consent of Owner), a felony, (4) Penal Code section 245, subdivision (c) (Assault with Deadly Weapon on Peace Officer or Firefighter), a felony, and (5) Vehicle Code section 20002, subdivision (a) (Hit and Run), a misdemeanor; the Felony Complaint also included allegations regarding Respondent's 1993 felony convictions, his prison sentence and succeeding parole, and the occurrence of the 1996 offenses during parole.

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14. On or about February 9, 1998, Respondent was convicted in Case No. C43126 of violating Vehicle Code section 2800.2 (Evading Peace Officer - Disregard for Safety), a felony, Vehicle Code section 10851, subdivision (a) (Driving or Taking Vehicle Without Consent of Owner), a felony, and Penal Code section 245, subdivision (c) (Assault with Deadly Weapon on Peace Officer or Firefighter), a felony. He was sentenced to state prison for a period of seven (7) years and four (4) months (88 months), suspended, a probation of five (5) years, on terms and conditions including one (1) year (365 days) in county jail, payment of restitution, abstention from drugs or alcohol, alcohol and drug testing as required by probation, search conditions, drug and alcohol counseling and/or 12-step recovery group attendance, proof of gainful employment, and an order that Respondent stay away from female minors and from schools.

15. On or about November 9, 1998, Respondent submitted an initial application to be a pharmacy technician to the Board of Pharmacy. That application was denied. After a Statement of Issues was filed on or about May 19, 2000, Respondent withdrew the prior application.

16. On or about December 1, 2007, Respondent signed and submitted the now-pending Application for Registration as a Pharmacy Technician and included affidavit, certifying under penalty of perjury the truth and accuracy of all statements, answers, and representations therein. That Application includes seven yes/no questions on pages 2 and 3, preceded by the instruction:

You must provide a written explanation for all affirmative answers indicated below. Failure to do so may result in this application being deemed incomplete and being withdrawn.

Question 6 of this series of questions in the Application then asks:

Have you ever been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances? You must include all misdemeanor and felony convictions, regardless of the age of the conviction, including those which have been set aside under Penal Code section 1203.4. Traffic violations of $500 or less need not be reported. **If "yes," attach an explanation including the type of violation, the date, circumstances, location and the complete penalty received.** In addition to this written explanation, please provide the Board of Pharmacy with **certified copies of all pertinent court documents or arrest reports relating to this conviction.**

17. Respondent checked the box for "Yes" in response to Question 6, and attached to his application a sheet of paper listing the convictions described in paragraphs 8-14 above, but he did not attach any of the required documentation (court documents or arrest reports).

FIRST CAUSE FOR DENIAL OF APPLICATION

(Conviction(s) of Substantially Related Crime(s))

18. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) as well as by reference to California Code of Regulations, title 16, section 1770, in that, as described in paragraphs 8-14 above, Respondent was convicted of a crime or crimes substantially related to qualifications, functions, or duties of the license sought.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Moral Turpitude, Dishonesty, Fraud, Deceit or Corruption)

19. Respondent's application is subject to denial under the following section(s) of the Code: 480(a)(2); 480(a)(3) by reference to 4301(f); and/or 4300(c) by reference to 4301(f), in that, as described in paragraphs 8, 13, and 14 above, Respondent engaged in conduct involving moral turpitude, dishonesty, fraud, deceit, or corruption.

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. Denying the application of Anthony Kevin Crosby to be a Pharmacy Technician;

2. Taking such other and further action as is deemed necessary and proper.

DATED: 10/27/09

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

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