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

In the Matter of: KEITH RAYMOND BARKER 1216 Mary Arthur Court Chico, California 95926 Pharmacy Technician Registration No. TCH 54053, Respondent.	Case No. 2862 OAH No. N2005120765

PROPOSED DECISION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings in Sacramento, California, on February 6, 2006.

Lorrie M. Yost, Deputy Attorney General, State of California, represented complainant Patricia F. Harris, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Keith Raymond Barker (respondent) appeared and represented himself.

Evidence was received and the matter submitted on February 6, 2006.

FACTUAL FINDINGS

1. Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, brought the accusation in her official capacity against respondent.

2. On January 20, 2004, the Board issued Pharmacy Technician Registration Number TCH 54053 to respondent. The registration is in full force and effect.

3. On October 24, 2004, Chico Police Officer Melody Davidson responded, with another officer, to a call of a man under the influence of a controlled substance at a certain location. Respondent's girlfriend met the officers and related that he had been house-sitting and for the past several days he had been exhibiting increasing symptoms of substance abuse. Carefully, out of concern for their safety, the officers entered the residence. Respondent was found in a corner of the kitchen sitting alone on a chair. Officer Davidson, possessing broad experience in drug abuse detection, approached respondent. Respondent exhibited various symptoms of controlled substance abuse, including hallucination, incoherence, and an inability to concentrate. Officer Davidson arrested respondent.

4. On December 10, 2004, in the Superior Court of California, County of Butte, in a matter entitled *People v. Keith Raymond Barker*, Case Number SCR47268, respondent, then age 28, pled guilty to violating Health and Safety Code section 11550, subdivision (a) (Under the Influence of a Controlled Substance), a misdemeanor and crime substantially related to the qualifications, functions or duties of a pharmacy technician. The Court deferred entry of judgment and ordered respondent to complete an 18-month diversion program.

Circumstances in Mitigation

5. Respondent, 29 years old, acknowledges his errant conduct on October 24, 2004. Currently unemployed, he has recently enrolled in a residential substance abuse treatment program. He acknowledges past abuse of controlled substances. He cites January 2, 2006, as a date of complete sobriety from any illicit substance ingestion, including alcohol.

6. Respondent, proud of his 4.0 grade point average in pharmacy technician school, seeks to retain his registration as an affirmation of his academic commitment, professional interest, and to maintain employment opportunities.

Circumstances in Aggravation

7. Within months of the issuance of his pharmacy technician registration, respondent was arrested for a violation of law involving illicit substance abuse.

8. Respondent has not yet completed the diversion program ordered by the Superior Court.

9. Respondent acknowledges the continuing abuse of illicit substances even after his arrest by Officer Davidson.

10. Respondent's errant conduct occurred less than two years ago.

Costs Findings

11. The Board incurred costs in the investigation, prosecution and enforcement of this matter in the sum of $2,750.50

1. Cause exists to revoke or suspend the license of respondent as a registered pharmacy technician for unprofessional conduct arising from self-administration of controlled substances pursuant to Business and Professions Code section 4301, subdivision (h) as set forth in Findings 2 through 4.

2. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth factors to be considered in determining the reasonableness of costs incurred by the Board. Those factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In the instant matter, respondent did not deny his culpability. But to clearly establish his unprofessional conduct, complainant was compelled to present the live testimony of the arresting police officer to both demonstrate respondent's underlying guilt to the charge for which Officer Davidson arrested respondent and to also show the nature, scope and extent of his errant conduct. Respondent, presently unemployed, presented no evidence directly challenging the Board's incurred costs or his own ability to reimburse the Board.

Cause accordingly exists to order respondent to pay the sum of $2,750.50 and for reasonable costs incurred in the investigation, enforcement and prosecution of this matter pursuant to the provisions of Business and Professions Code section 125.3, and as set forth in Legal Conclusion 1, and Finding 11.

3. The objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in Board licensure.[1] And, having determined culpability, a key concern lies in arriving at a disciplinary recommendation that is the degree to which the public needs protection from an errant practitioner.[2]

Despite his interest in maintaining his registration, and his recent participation in a rehabilitation program; it cannot be readily ignored that within months of his registration, respondent was arrested for abusing illicit controlled substances. That, combined with his admitted post-arrest abuse and recent date of sobriety, and mindful that the primary focus of the Board is, as observed by the appellate court in *Fahmy v. Medical Board of California, Supra,* 38 Cal.App.4th p. 817 at p. 817, to "afford protection to the public"; and with further regard to the circumstances in mitigation (Findings 5 through 6) and aggravation (Findings 7 through 10), the public interest will be harmed at this time[3] by the continued issuance of a pharmacy technician registration to respondent.

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[1] *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

[2] *Mepham v. State Bar* (1986) 42 Cal.3d 943, 948; see also *Fahmy v. Medical Board of California, Supra,* 38 Cal.App.4th p. 817 at p. 817,.

[3] Although this Decision and Order are adverse to respondent, he must not lose heart from the issuance of this Decision. He should continue with his rehabilitative efforts and, upon possessing sufficient evidence of rehabilitation, seek re-licensure.

ORDER

1. Pharmacy Technician Registration No. TCH 54053 issued to respondent Keith Raymond Barker is revoked pursuant to Legal Conclusions 1 and 3.

2. Respondent Keith Raymond Barker (Pharmacy Technician Registration No. TCH 54053) is ordered to reimburse the sum of $2,750.50 to Board of Pharmacy, Department of Consumer Affairs, State of California, pursuant to Legal Conclusion 2.

Dated: February 9, 2006

JAIME RENERO MAN
Administrative Law Judge
Office of Administrative Hearings

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

BOARD OF PHARMACY
2006 MAR 10 AM 11: 12

In the Matter of: KEITH RAYMOND BARKER 1216 Mary Arthur Court Chico, CA 95926 Pharmacy Technician Registration No. TCH 54053 Respondent.	File No. 2862 OAH No. N2005120765

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on April 12, 2006.

IT IS SO ORDERED March 13, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

BILL LOCKYER, Attorney General
of the State of California
LORRIE M. YOST, State Bar No. 119088
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 445-2271
Facsimile: (916) 327-8645

Attorneys for Complainant

PENGAD 800-631-6989
STATE'S EXHIBIT
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ORIGINAL

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

In the Matter of the Accusation Against: **KEITH RAYMOND BARKER** 1216 Mary Arthur Court Chico, California 95926 Pharmacy Technician Registration No. TCH 54053 Respondent.	Case No. 2862 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Patricia F. Harris ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

2. On or about January 20, 2004, the Board issued Pharmacy Technician Registration Number TCH 54053 to Keith Raymond Barker ("Respondent"). Respondent's pharmacy technician registration was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2007, unless renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Bus. & Prof. Code") section 4202, subdivision (d), states that the Board may suspend or revoke any registration issued pursuant to this section on any ground specified in Section 4301.

4. Bus. & Prof. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

5. Bus. & Prof. Code section 4301 states, in pertinent part:

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

. . . .

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

6. Bus. & Prof. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a --------," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

7. Bus. & Prof. Code section 477 provides, in pertinent part, that "license" includes certificate, registration or other means to engage in a business or profession regulated by the Bus. & Prof. Code.

8. Health and Safety Code ("Health & Saf. Code") section 11550, subdivision (a), states:

> No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. Any person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not less than 90 days or more than one year in a county jail. The court may place a person convicted under this subdivision on probation for a period not to exceed five years and, except as provided in subdivision (c), shall in all cases in which probation is granted require, as a condition thereof, that the person be confined in a county jail for at least 90 days. Other than as provided by subdivision (c), in no event shall the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

Cost Recovery

9. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES AT ISSUE

10. "Methamphetamine" is a Schedule II controlled substance as designated by Health & Saf. Code section 11055, subdivision (d)(2), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

11. "Heroin" is a Schedule I controlled substance as designated by Health & Saf. Code section 11054, subdivision (c)(11), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

FIRST CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances and Use of Dangerous Drugs in a Dangerous or Injurious Manner)

12. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that he self-administered controlled substances and used said controlled substances/dangerous drugs to an extent or in a manner dangerous or injurious to himself, other persons, and the public, as follows:

13. On or about October 24, 2004, Respondent was observed displaying signs of extreme intoxication and mental confusion. Respondent was subsequently placed under arrest.

14. On December 10, 2004, in the criminal proceeding titled *People v. Keith Raymond Barker* (Butte County Super. Ct., Case Number SCR47268), Respondent plead guilty to violating Health & Saf. Code section 11550, subdivision (a) (a misdemeanor) by having unlawfully used and been under the influence of methamphetamine and heroin. The Court deferred entry of judgment against Respondent and ordered Respondent to complete an eighteen (18) month diversion program (to be completed on approximately June 13, 2006).

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 54053, issued to Keith Raymond Barker;

2. Ordering Keith Raymond Barker 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;

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

DATED: 8/31/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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