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

In the Matter of the Accusation Against: RICHARD PAUL MASON 2808 E. Vista Way Vista, CA 92084 Original Pharmacy Technician Registration No. TCH 58735 Respondent.	Case No. 3119 OAH No. 2008060208

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 November 14, 2008.

It is so ORDERED on October 15, 2008.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
KENNETH H. SCHELL
Board President

BEFORE THE
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In the Matter of the Accusation Against:	Case No. 3119
RICHARD PAUL MASON,	OAH No. 2008060208
Pharmacy Technician Registration No. TCH 58735	
Respondent.	

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 27, 2008, in San Diego, California.

Diane De Kervor, Deputy Attorney General, represented complainant Virginia Herold, the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California.

Respondent Richard Paul Mason represented himself and was present throughout the administrative proceeding.

On August 27, 2008, the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. On December 17, 2007, complainant Virginia Herold, the Executive Officer of the Board of Pharmacy (the Board), Department of Consumer Affairs, State of California, signed the accusation in her official capacity. The accusation alleged that respondent Richard Paul Mason (Mason or respondent) had been convicted of possession of a controlled substance on November 15, 2006 (first cause for discipline) as a result of his possession and use of cocaine on April 28, 2006 (second cause for discipline), and was convicted again of possession of a controlled substance on November 15, 2006 (third cause for discipline) as a result of his possession and use of cocaine on October 4, 2006 (fourth cause of action), all of

which established Mason's unprofessional conduct (fifth cause of action). The accusation sought to suspend or revoke Mason's pharmacy technician registration and an order directing Mason to pay to the Board its reasonable costs of investigation and enforcement.

The accusation and other required documents were served on Mason, who timely filed a notice of defense. The disciplinary matter was set for an administrative hearing.

On August 27, 2008, the record in the administrative hearing was opened. Jurisdictional documents were presented. Notice was taken of the Board's disciplinary guidelines. Sworn testimony and documentary evidence were received, closing arguments were given, the record was closed, and the matter was submitted.

Registration Information and History

2. To qualify for registration as a pharmacy technician under Business and Professions Code section 4202, an individual must establish that he or she is a high school graduate or possesses a general educational development certificate equivalent and meets one of the following conditions: (1) Holds an associate's degree in pharmacy technology; or (2) has completed a course of training specified by the Board;[1] or (3) has graduated from a school of pharmacy recognized by the Board; or (4) holds certification from the Pharmacy Technician Certification Board (PTCB). In addition, the applicant must not have been convicted of any crime or have engaged in any misconduct substantially related to the qualifications, functions, or duties of a registered pharmacy technician. Passing a competency examination is not required to become registered as a pharmacy technician.

Pharmacy technicians are not independent practitioners, but work under the close supervision of registered pharmacists. Pharmacy technicians have access to controlled substances as a consequence of their employment.

3. On September 29, 2004, the Board issued Original Pharmacy Technician Registration No. TCH 58735, to Mason, authorizing him to act as a pharmacy technician in California. Mason's pharmacy technician's registration is renewed through September 30, 2008, unless suspended or revoked.

There is no history of any previous administrative discipline having been imposed against Mason's pharmacy technician's registration.

Mason's Background, Training, and Experience

4. Mason was born on September 27, 1983. He grew up in Southern California, living in Vista most of his life. He graduated from Vista High School in 2001. After

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[1] California Code of Regulations, title 16, section 1793.6 provides that a course of training which meets the requirements of Business and Professions Code section 4202, subdivision (a)(2) includes: (a) A training program accredited by the American Society of Health-System Pharmacists; or (b) training provided by a branch of the federal armed services for which the applicant possesses a certificate of completion; or (c) any other training involving at least 240 hours of instruction in designated subject matters.

graduating from high school, Mason took general education courses at Palomar Community College. He became employed as a retail sales clerk at the Rite Aid Drug Store on East Vista Way in Vista, California, after which he became a pharmacy clerk.

5. After working as a pharmacy clerk for several months, Mason decided that he wanted to become a registered pharmacy technician, with the hope of becoming a registered pharmacist. Mason began on-the-job training with Theresa M. Hawks (Hawks), PharmD, Rite Aid's pharmacy manager, and undertook a formal training course provided by Rite Aid that consisted of one eight-hour meeting each month for six months, and continuing practical education with Hawks, followed by comprehensive testing. Mason passed the competency testing administered by Rite Aid and became registered as a pharmacy technician.

Mason has been employed continuously as a pharmacy technician, under Hawks' supervision, at the Rite Aid pharmacy on East Vista Way since September 2004. He has access to the controlled substances in the pharmacy. He has not diverted any controlled substances. Mason has not been disciplined for any vocational misconduct. Mason told Hawks about his first arrest for possession of cocaine within a week of his arrest, and he told Hawks about his second arrest almost immediately after that arrest. According to Mason, Rite Aid required him to submit to random drug testing after his first arrest (the test results were always negative for the presence of controlled substances). Hawks was extremely disappointed after Mason's second arrest, but Mason managed to maintain his employment. Mason said he continued random testing following his second arrest, with negative results. Mason's testimony was credible, and no contrary evidence was presented.

Hawks submitted a letter to the Board representing that she had observed every aspect of Mason's work in the pharmacy for the past five years, and that she "could not be more satisfied with Paul's work performance in our pharmacy." Hawks described Mason as conscientious, self-disciplined, pleasant, and professional. Hawks believed that Mason was an individual of character, integrity, and sound professional reputation.

Mason's Arrests and Convictions

6. On April 28, 2006, at approximately 4:30 a.m., following an investigation into a disturbing the peace complaint, Mason and Brandon L., Mason's high school friend, were arrested at an apartment in Vista for being under the influence of a controlled substance and unlawful possession of a controlled substance. Almost immediately after the police arrived, Mason spontaneously told an investigating officer that he had used cocaine[2] and that there was cocaine in the truck in the garage. Following his arrest, Mason was cooperative with law enforcement officers. He was very apologetic, and admitted that he had been drinking and snorting cocaine for approximately 12 hours before his arrest. No children or others were present in the apartment. Mason was booked and released.

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[2] Cocaine is a powerful central nervous system stimulant derived from the leaves of the coca plant. It is a controlled substance.

7. On June 20, 2006, Mason was convicted on his plea of guilty of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance – cocaine), a misdemeanor, in the Superior Court of California, County of San Diego, North County Division, in Case No. CN211642, entitled *People of the State of California v. Richard P. Mason.*

Mason's application for deferred entry of judgment under Penal Code section 1000 was granted for 18 months. Mason was ordered to pay $300 in fines and fees, and was given credit of $100 for time served following his arrest. Following his October 2006 arrest for possession of cocaine (Factual Finding 8), diversion was revoked and then reinstated. Mason successfully completed the diversion program.

8. On October 4, 2006, at approximately 2:00 a.m., Mason, Brandon L., and Wanda B. were arrested in the parking lot of a 7-11 in San Marcos for possession and being under the influence of a controlled substance. Before their arrests, Mason met with Brandon L. and Wanda B. to celebrate Wanda B.'s birthday. Mason was, at the time, in the deferred entry of judgment program. Nevertheless, Mason was unable to resist the suggestion that they celebrate Wanda B.'s birthday by snorting cocaine. After ingesting some cocaine, Mason drove the others to a nearby 7-11, an area known for drug activity, where they purchased something to eat. When they were in the parking lot eating, they were approached by two patrol officers. Mason was asked by one of the officers when he had last used cocaine. Mason told the officer "about 30 minutes ago" and then told him that he and his friends were in possession of a quantity of unused cocaine. A small quantity of cocaine was seized from Mason's truck. Mason and the others were booked and released.

9. On November 15, 2006, Mason was convicted on his plea of guilty of violating Health and Safety Code section 11377, subdivision (a) (possession of a controlled substance – cocaine), a misdemeanor, in the Superior Court of California, County of San Diego, North County Division, in Case No. CN211642, entitled *People of the State of California v. Richard P. Mason.*

Time was waived for sentencing and Mason accepted a Proposition 36 referral to drug court. One year formal probation was granted under Penal Code section 1210, but imposition of sentence was suspended for three years on condition that Mason pay fines and fees of $600, that he contribute to the cost of his attendance at a drug treatment program, that he successfully complete a drug treatment program, that he attend AA/NA or other self-help groups as directed, that he totally abstain from drinking alcoholic beverages, that he not use or possess controlled substances, that he submit to random testing for the presence of alcohol and controlled substances, that he submit to searches and seizures, that he not possess any firearms, and that he obey all laws.

On February 20, 2008, an order dismissing the criminal complaint under Penal Code section 1210.1, subdivision (d), was signed and filed. Mason was released from all penalties and disabilities resulting from his conviction and referral to drug court except: (1) The order does not permit Mason to own, possess, or have control over any concealed firearm; (2) the order does not relieve Mason of his obligation to disclose his arrest and conviction in

response to a direct question contained in any application for licensure with any state or local agency, among other matters.

Evidence in Explanation, Extenuation, Mitigation and Rehabilitation

10. Mason testified he began using marijuana in early 2001, while he was "hanging around with friends," one of whom was Brandon L. Although Mason testified he did not like using marijuana initially, he continued to use it. Around September 2001, Brandon L. introduced Mason to cocaine. Although Mason used cocaine infrequently shortly after that introduction, his use of cocaine increased to the extent that by June 2006 he was snorting cocaine once every three days or so. While Mason did not purchase cocaine directly, he paid friends to purchase cocaine for their recreational use. He never sold illegal drugs. Mason did not use illegal drugs at work and he never went work when he was under the influence. He did not think he had a drug problem before his first arrest.

As a result of his June 2006 arrest, Mason entered the Penal Code section 1000 diversion program. Mason testified that the diversion program was not intensive, that he was not tested for the use of drugs on a frequent basis, and that many participants in the diversion program boasted about their continuing drug use. As a result of the casual manner in which drug use was treated in this program, Mason testified he did not appreciate fully the extent to which his future use of illegal drugs might impact his personal fitness and professional prospects. It was based on this flawed perception, according to Mason, that he and Brandon L. decided to celebrate Wanda B.'s birthday by ingesting cocaine on October 4, 2006. Mason testified that was the first time he had used cocaine since his June 2006 arrest.

As a result of his participation in the Proposition 36 program (Pen. Code, § 1210.1), Mason gained a new respect for the perils of illegal drug use. He enrolled in a nine-month Proposition 36 outpatient treatment program that was provided by the McAllister Institute of Treatment and Education. That treatment program provided education and treatment strategies, required attendance at self-help meetings, and administered random drug tests. According to Mason, he developed a "whole new understanding" of the dangers of illegal drug use and excessive alcohol use. On August 2, 2007, Mason completed the treatment program.

In addition to the negative test results for the presence of illegal drugs that were obtained through testing by the McAllister Institute of Treatment and Education, the results of testing conducted by Rite Aid as a condition of Mason's continuing employment as a pharmacy technician were negative as well.

Mason has not used illegal drugs since his October 2006 arrest. He rarely consumes alcoholic beverages; Mason testified he last consumed alcohol while he was on vacation in Las Vegas in January 2008, after he completed probation. He attended NA meetings, but he and his Proposition 36 advisor believed it was not necessary for Mason to continue attending those meetings to maintain his sobriety. Mason does not have an NA sponsor and is not working the twelve steps of recovery, although he testified he would do so if required by the Board as a condition of probation.

Mason has never sold drugs illegally, he has never purchased drugs directly from an illegal drug dealer, he has never used pharmaceutical drugs on a recreational basis, and he is not aware of any controlled substances in the Rite Aid pharmacy which are similar to cocaine. He has not been convicted of a felony.

11. Gary Mason, respondent's father, testified respondent was doing "great" until he began having drug problems in 2006. Respondent's attitude towards the use of illegal drugs changed completely as a result of his participation in the McAllister treatment program, according to Mason's father. Mason is now aware that "this is his life" and there are adverse consequences to his immature and irresponsible behavior.

12. Valerie Sakamura, PharmD (Investigator Sakamura), is an experienced Board investigator. In June 2006, Investigator Sakamura became aware of Mason's arrest as a result of an unrelated investigation. She requested the Board open an investigation into Mason's arrest. Thereafter, Investigator Sakamura obtained relevant court documents. On February 7, 2007, Investigator Sakamura interviewed Mason, who fully cooperated with Investigator Sakamura and truthfully advised her of all the facts and circumstances surrounding his arrests and convictions. Mason also provided the Board with a handwritten statement concerning the offenses and his rehabilitative efforts. Investigator Sakamura found Mason to be honest and contrite. Investigator Sakamura interviewed Hawks and determined that Hawks believed Mason was an outstanding employee.

13. Investigator Sakamura testified that respondent's convictions were substantially related to the qualifications, functions, and duties of a registered pharmacist technician. She concluded Mason's convictions were Category II violations under the Board's disciplinary guidelines. Investigator Sakamura testified that the Board does not have the capacity to conduct random drug tests at this time, even though the disciplinary guidelines specifically refer to drug testing as a condition of probation.

Disciplinary Guidelines

14. The Board enacted comprehensive regulatory guidelines[3] which should be followed in disciplinary actions. The Board recognizes that individual cases may necessitate a departure from the guidelines; in such cases, mitigating circumstances should be detailed.

With regard to a pharmacy technician, the guidelines state:

> "The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

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[3] California Code of Regulations, title 16, section 1760.

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol . . . ."

If a revocation is not imposed, the Board recommends a minimum of a Category II level of discipline be imposed. This measure of discipline includes a suspension and a period of probation. In addition, a disciplined pharmacy technician must obtain certification from the Pharmacy Technician Certification Board (PTCB) before resuming work as a pharmacy technician on a probationary basis. The Board believes that certification before resuming work is always warranted in cases where a pharmacy technician's registration is disciplined but not revoked.

In determining whether the minimum, maximum, or an intermediate penalty should be imposed, factors such as the following should be considered: (1) Actual or potential harm to the public; (2) actual or potential harm to any consumer; (3) prior record, including level of compliance with any disciplinary orders; (4) prior warnings of record, including citations and fines; (5) number and/or variety of current violations; (6) nature and severity of the acts, offenses, or crimes under consideration; (7) mitigating evidence; (8) rehabilitation evidence; (9) compliance with terms of any criminal sentence; (10) overall criminal record; (11) if applicable, evidence of proceedings for a case being set aside and dismissed pursuant to section 1203.4 of the Penal Code; (12) time passed since the acts or offenses; (13) whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct; and (14) any financial benefit from the misconduct.

No single or combination of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one.

15. Mason's misconduct involved a Category II violation. The guidelines for a Category II violation provide:

> "A minimum three-year probation period has been established by the board as appropriate in most cases where probation is imposed. A minimum five-year probation period has been established by the board as appropriate where self-administration or diversion of controlled substances is involved. Terms and conditions are imposed to provide consumer protection and to allow the probationer to demonstrate rehabilitation. . . . The board prefers that any stayed order be for revocation rather than for some period of suspension."

The Appropriate Measure of Discipline

16. Mason used cocaine on an increasingly recreational basis from September 2001 through October 2006. Mason's use of cocaine reached its maximum consumption in April 2006. Mason has been abstinent of cocaine and other illegal drugs since then, with the

exception of a single relapse in October 2006. Following that relapse, Mason became far more appreciative of the dangers and pitfalls involved in using illegal drugs.

Mason's use of illegal drugs did not result in any actual harm to the public, although there was a potential for harm. Mason has no other criminal record, as would be expected if he were addicted to illegal drugs and needed to steal or engage in other unlawful activities to support a drug habit. Mason did not benefit financially from his illegal drug use. Mason briefly failed in his first effort at sustained sobriety, but he has succeeded since. Mason's youth and his relatively minimal use of drugs was a mitigating factor. Mason accepted full responsibility for his misconduct, he cooperated with law enforcement, he cooperated with the Board's investigator, he expressed sincere remorse, and he is well into the process of rehabilitating himself. Mason fully complied with Proposition 36 treatment program and successfully completed probation. While it is recommended that Mason take part in a formal twelve-step program such as AA to maintain his long term sobriety, his current participation is not necessary to establish his sobriety. Mason is learning a very difficult lesson. Just about two years has passed since the most recent misconduct, and Mason's regrets and remorse make it appear that similar misconduct will likely not reoccur.

The primary purpose of this disciplinary proceeding is to protect the public. The imposition of a revocation, stayed, with five years probation on appropriate terms and conditions will adequately protect the public. Imposition of this measure of discipline will permit Mason to further demonstrate his trustworthiness and the absence of a substance abuse problem. During the period he is on probation, Mason will be permitted to maintain his employment provided his employer has a random drug testing program and, further, provided that his employer agrees to administer such program and to advise the Board of any positive test results. Mason will be required to obtain certification from the PTCB before resuming any work as a registered pharmacy technician, which has the practical effect of imposing a suspension, and he will be required to pay the Board's reasonable costs of investigation and prosecution, which will serve as a painful financial reminder of the consequences of his previous bad decisions.

Costs of Investigation and Enforcement

17. A certification of costs/declaration was signed by the deputy attorney general who prosecuted the action. The certification established that the Attorney General's Office billed about 24 hours of attorney services at the rate of $158 per hour in the 2007-2008 and 2008-2009 fiscal years, for a total of approximately $3,800. The time spent, the time estimated, and the hourly rate were quite reasonable. The deputy attorney general who prosecuted the matter was well prepared and very professional. The Board's investigative costs totaled approximately $1,750. The Board's total reasonable costs of investigation and prosecution in this matter totaled $5,550.

Complainant initially sought a revocation, which was not unreasonable given the nature and extent of the wrongdoing. Mason always admitted wrongdoing, and he requested a hearing because he wanted to retain his registration. Mason requested an administrative

hearing to adjudicate the proper measure of discipline, he had a subjective good faith belief in the merits of his claim, and he raised a successful challenge to the proposed discipline.

Mason's financial circumstances were not established, other than he makes about $16.50 per hour in his capacity as a pharmacy technician for Rite Aid. Mason is fairly young, he does not come from a wealthy family, and requiring him to pay all the costs would under the circumstances involve a financial hardship and would have a chilling effect on the right of accused pharmacy technicians to challenge the measure of discipline initially sought by the Board.

Under all the circumstances, cause exists to direct Mason to pay $3,000 in costs, which represents about one and a half month's wages after federal and state taxes are deducted. Payment of costs will be required to commence after Mason obtains certification from the PTCB.

LEGAL CONCLUSIONS

Standard of Proof

1. Courts have drawn a clear distinction between professional licenses, such as veterinarians or psychologists, and nonprofessional occupational licenses. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. In contrast, an applicant for a professional license must ordinarily satisfy extensive educational and training requirements, and then pass a rigorous state-administered competency examination. The sharp distinction between professional licenses and nonprofessional licenses supports a distinction in the standards of proof needed to revoke these two different types of licenses. Because a professional license represents the licensee's fulfillment of extensive education, training and testing requirements, it makes sense to require a higher standard of proof to suspend or revoke such a license. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

An administrative disciplinary action seeking to suspend or revoke a professional license requires proof by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) The practice of pharmacy, like the practice of medicine, is a profession. (*Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19, 25.) The suspension or revocation of a license issued to a registered pharmacist requires clear and convincing evidence because of the extensive professional training that is required to hold that registration; however, it is not as evident that this elevated standard of proof applies to the suspension or revocation of a pharmacy technician's registration because of the relatively minimal education, training, experience, and lack of competency testing required to obtain that registration (see Factual Finding 2 and Legal Conclusions 2).

2. Business and Professions Code section 4038 defines a "pharmacy technician" as "an individual who assists a pharmacist in a pharmacy in the performance of his or her

pharmacy related duties as specified in section 4115." Business and Professions Code section 4115 sets forth various tasks a pharmacy technician may perform. For example, subdivision (a) provides "a pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist." The duties a pharmacy technician may perform are further subject to regulation.[4]

Business and Professions Code section 4115, subdivision (e) provides:

"No person shall act as a pharmacy technician without first being registered with the board as a pharmacy technician as set forth in Section 4202."

The rules and regulations related to registered pharmacy technicians do not allow a pharmacy technician to perform any discretionary act or any act requiring the exercise of professional judgment by a registered pharmacist. (*Californians for Safe Prescriptions v. California State Board of Pharmacy* (1993) 19 Cal.App.4th 1136, 1155-1156.)

Obtaining registration as a pharmacy technician requires more education and training than is required to obtain a license to sell cars or a permit to become a food processor; but, obtaining such a registration takes considerably less education, training, and experience than is required to become a doctor, dentist, attorney, teacher, or pharmacist. Passing a state-administered competency examination is not required to obtain registration, as is the case in order to become a real estate licensee or a licensed contractor.

3. The standard of proof required to suspend or revoke the registration issued to a pharmacy technician is a preponderance of the evidence. In this matter, however, the outcome would not be any different if the more stringent clear and convincing standard of proof were applied because there was no real dispute about any of the evidence.

Disciplinary Authority

4. Business and Professions Code section 490 provides:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a

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[4] California Code of Regulations, title 16, section 1793.2 provides:

"'Nondiscretionary tasks' as used in Business and Professions Code section 4115, include:

(a) Removing the drug or drugs from stock;
(b) counting, pouring, or mixing pharmaceuticals;
(c) placing the product into a container;
(d) affixing the label or labels to the container;
(e) packaging and repackaging."

conviction following a plea of nolo contendere. Any action which 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, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."

5. Business and Professions Code section 4060 provides in part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor . . . or furnished pursuant to a drug order issued by a certified nurse-midwife . . . , a nurse practitioner . . . , a physician assistant . . . , a naturopathic doctor . . . , or a pharmacist . . . This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices."

6. Business and Professions Code section 4300 provides in part:

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

. . .

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

7. Business and Professions Code section 4202 provides in part:

"(d) The board may suspend or revoke a [pharmacy technician] registration issued pursuant to this section on any ground specified in Section 4301."

8. Business and Professions Code section 4301 provides in part:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct . . . Unprofessional conduct shall include, but is not limited to, any of the following:

. . .

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs . . .

(k) The conviction of more than one misdemeanor . . . involving the use, consumption, or self-administration of any dangerous drug . . .

(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 the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct . . . ."

Substantial Relationship

9. A professional license may be suspended or revoked only if the conduct upon which the discipline is based relates to the practice of the particular profession and thereby demonstrates a present unfitness to practice such profession. Whether this requirement is termed a "nexus" or a "relationship," the inherent meaning is the same. There must be a logical connection between the licensees' conduct to their present fitness or competence to practice the profession or to the qualifications, functions, or duties of the profession in question. Despite the omission of an explicit requirement that there be a "substantial relationship" in a disciplinary statute, courts have concluded that the Legislature intend such a requirement. (*Clare v. California State Board of Accountancy* (1992) 10 Cal.App.4th 294, 301-303.)

10. The substantial relationship between holding a pharmacy technician registration and the unlawful possession or use of controlled substances or dangerous drugs is obvious – persons who illegally possess or use such substances should not be permitted to hold employment that provides virtually unlimited access to controlled substances because of the high risk of diversion and abuse, and the harm inevitably be caused to the public as a consequence thereof. This substantial relationship is amply demonstrated in the Board's guidelines.

Cause Exists to Impose Administrative Discipline

11. Cause exists to impose discipline against Mason's registration. The allegations set forth in the accusation were established by a preponderance of the evidence. Mason was convicted of possession of a controlled substance on November 15, 2006 (first cause for discipline) as a result of his possession and use of cocaine on April 28, 2006 (second cause for discipline), and was convicted of possession of a controlled substance on November 15, 2006 (third cause for discipline) as a result of his possession and use of cocaine on October 4, 2006 (fourth cause of action), all of which established Mason's unprofessional conduct (fifth cause of action).

This conclusion is based on Factual Findings 6-9, and on Legal Conclusions 1-10.

The Appropriate Measure of Discipline

12. The Board's disciplinary guidelines were applied in this matter. Those guidelines do not mandate a straight revocation given the kinds of evidence Mason presented in explanation, mitigation, and rehabilitation, but the guidelines do require the imposition of a Category II sanction. Mason's misconduct was serious, but he appeared finally to have learned a very difficult lesson. There is no evidence that Mason suffers from a substance abuse problem at the present. He is a trusted employee and his employer has a drug testing program on which the Board may reasonably rely. The imposition of a revocation, stayed, with five years probation on appropriate terms and conditions of probation will adequately protect the public.

This conclusion is based on Factual Findings 1-16 and on Legal Conclusions 1-12.

Recovery of Costs of Investigation and Prosecution

13. Business and Professions Code section 125.3 provides in part:

> "(a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. . . .
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> . . .
>
> (d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a) . . . ."

14. In *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court held that the imposition of costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5 did not violate due process. However, the court held that it was incumbent upon the Board to exercise its discretion to reduce or eliminate cost awards in such a manner as to ensure that the claims recovery regulation did not "deter chiropractors with potentially meritorious claims or defenses from exercising their right to a hearing." The Court set forth four factors which were required to be considered in deciding whether to reduce or eliminate costs: (1) Whether the chiropractor used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the chiropractor had a "subjective" good faith belief in the merits of his position; (3) whether the chiropractor raised a "colorable challenge" to the proposed discipline; and (4) whether the chiropractor had the financial ability to make payments.

Since California Code of Regulations, title 16, section 317.5 and Business and Professions Code section 125.3 contain substantially the same language and seek the same kind of recovery, it is reasonable to extend the reasoning in *Zuckerman* to Business and Professions Code section 125.3.

15. Under all the circumstances, causes exists under Business and Professions Code section 125.3 to direct Mason to pay to the Board $3,000 in costs.

This conclusion is based on all Factual Findings and on all Legal Conclusions.

ORDER

Pharmacy technician registration number TCH 58735 issued to respondent Richard Paul Mason is revoked; however, the order of revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. *Obey All Laws*

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

2. *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 until he provides satisfactory proof of such certification to the Board. During this period of 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 his employment with Rite Aid so long as he does not have any direct contact with any controlled substance or dangerous drug.

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 or her 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 this case and of the terms, conditions and restrictions imposed on respondent by the decision, including the obligation of any present or prospective employer to administer random drug testing and to report the results of such drug testing to the Board.

Within 30 days of the effective date of this decision, and before respondent undertakes any new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in this case.

7. *Limitation on Employment*

Respondent shall not commence new employment in any pharmacy or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer, or any other distributor of drugs that is licensed by the Board, or in any structure where dangerous drugs and devices or controlled substances are maintained, nor shall respondent have any new employment 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, nor shall respondent have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances without first seeking Board approval. All employers must have a random drug testing program in place and must be willing to pay for respondent's testing in such a program.

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

8. *Requirement of Employer Testing and Reporting*

Respondent, through his employer, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program selected by his employer and administered by the employer or the employer's agent. Respondent shall be subject to this random testing requirement for the entire probation period, and the frequency of testing will be determined by his employer but not less than four times a year. At all times respondent shall fully cooperate with the employer and the entity conducting the testing, and respondent shall, when directed, submit immediately to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation.

Respondent's employer shall, as a condition of respondent's probation, provide all test results to the Board upon receipt. Any confirmed positive drug test shall result in the immediate suspension of practice by respondent. Respondent may not resume practice as a pharmacy technician until permitted to do so by the Board.

9. *Abstain from Drugs and Alcohol Use*

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and associated paraphernalia except when drugs are lawfully prescribed by a licensed health care practitioner as part of a documented medical treatment for respondent. 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. Respondent shall ensure that he is not in the presence of or in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs.

10. *Reimbursement of Board Costs*

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $3,000.00. Respondent shall make said payments at the rate of $200 or more each month until this obligation is satisfied.

Respondent's first payment shall become due 30 days after he is notified by the Board that he has been taken off suspension as a result of having obtained certification from the PTCB.

If respondent fails to pay the costs as specified by the Board, the Board shall, without affording the respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the Board its costs.

11. *Probation Monitoring Costs*

Respondent shall pay the reasonable 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.

12. *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.

13. *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.

14. *Work Site Monitor*

Within 10 days after commencing any new employment requiring a pharmacy technician registration, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours and for providing the Board with he results of random drug testing. The work site monitor shall report to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within 10 days of commencing new employment.

15. *Notification of Departure*

If respondent leaves the geographic area for a period greater than 24 hours, respondent shall notify the Board verbally and in writing of the dates of departure and return, prior to leaving.

16. *Tolling of Suspension*

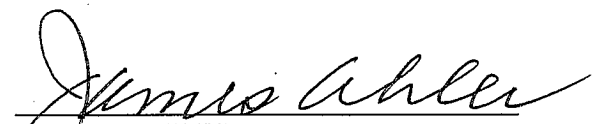
If respondent leaves California to reside or practice outside this state, or for any period exceeding 10 days (including vacation), respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension

period. Respondent shall not act as a pharmacy technician upon returning to this state until notified by the Board that the period of suspension has been completed.

17. *Successful Completion of Probation*

Upon the successful completion or early termination of probation, respondent's registration shall be fully restored.

DATED: 9/8/08.



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Attorneys for Complainant

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

In the Matter of the Accusation Against: **RICHARD PAUL MASON** **2808 E. Vista Way** **Vista, CA 92084** Pharmacy Technician Registration No. 58735 Respondent.	Case No. 3119 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about September 29, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 58735 to Richard Paul Mason (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2008, unless renewed.

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JURISDICTION AND STATUTORY PROVISIONS

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

4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 482 states:

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

". . . .

"(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."

6. Section 490 of the Code states, in pertinent part:

"A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . . "

7. Code section 493 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.

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

8. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use, except veterinary drugs that are labeled as such, 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.

"(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."

9. Section 4060 of the Code states:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, physician, podiatrist, dentist, veterinarian, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

"Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, or a physician assistant to order his or her own stock of dangerous drugs and devices."

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10. Section 4300 of the Code states, in pertinent part:

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

11. Section 4301 of the Code 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.

". . . .

"(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

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

"(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 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."

12. 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) 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."

13. 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."

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COST RECOVERY

14. Section 125.3 of the Code 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.

DRUG

15. Cannabinoids (Marijuana) are dangerous drugs pursuant to section 4022 and are Schedule I controlled substances as designated by Health and Safety Code section 11054(d)(20).

16. Cocaine is a Schedule II controlled substance as designated by Health and Safety Code section 11055(b)(6), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(November 15, 2006 Criminal Conviction - Possession of Cocaine on April 28, 2006)

17. Grounds exist to revoke Respondent's license pursuant to section 4300, under sections 490, 493, and 4301(j), (k) and (l), for a criminal conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy Technician and a violation of drug laws. On November 15, 2006, in a case entitled *People vs. Richard Paul Mason* (Sup. Ct., San Diego, 2006, Case No. CN211642), Respondent was convicted by a plea of guilt to a violation of Health and Safety Code section 11377(a), a misdemeanor.

18. The facts and circumstances surrounding this cause for discipline are as follows: Respondent admitted that he willfully and unlawfully possessed a controlled substance. On or about April 28, 2006, the police were called to a residence when a neighbor reported banging on the walls and screaming. The neighbor reported concern about the safety of an infant that reportedly lived in the home. When Officers arrived at the residence, they did a protective search of the home for the infant. Although no infant was found, Respondent spontaneously reported that he had been using cocaine and that it was in his companion's truck in the garage. A

search of the truck revealed cocaine and marijuana. After admonishment, Respondent admitted that he and his companion had been drinking alcohol and snorting cocaine since approximately 4:00 p.m. the day before. Respondent admitted to being a frequent user of controlled substances.

19. On June 20, 2006, the entry of judgment was deferred for 18 months pursuant to Penal Code section 1000, but Respondent was required to pay $200 in fines and fees. On October 11, 2006, the Penal Code section 1000 deferral was aside based upon Respondent's subsequent arrest and conviction for another drug charge (See paragraphs 21 to 23 below). On November 15, 2006, the same day that he was to be sentenced on his subsequent conviction, Respondent was sentenced to one day in jail for this conviction.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Unlawful Use and Possession of a Controlled Substance (Cocaine) on April 28, 2006)

20. Grounds exist to revoke Respondent's license pursuant to section 4300, under sections 4301 (h) and (j) and 4060, for the unlawful use and possession of a controlled substance in a manner harmful to himself. The facts and circumstances surrounding this cause for discipline are described in paragraphs 17 to 19 above and are hereby incorporated by reference.

THIRD CAUSE FOR DISCIPLINE

(November 15, 2006 Criminal Conviction - Possession of Cocaine on October 4, 2006)

21. Grounds exist to revoke Respondent's license pursuant to section 4300, under sections 490, 493, and 4301(j), (k), and (l), for a criminal conviction that is substantially related to the qualifications, functions, and duties of a Pharmacy Technician and a violation of drug laws. On November 15, 2006, in a case entitled *People vs. Richard Paul Mason* (Sup. Ct., San Diego, 2006, Case No. CN218684), Respondent was convicted by a plea of guilt to a violation of Health and Safety Code section 11377(a), a misdemeanor.

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22. The facts and circumstances surrounding this conviction are as follows: Respondent admitted that he willingly and knowingly possessed a useable quantity of a controlled substance (cocaine). On or about October 4, 2006, Respondent and two companions were sitting in Respondent's vehicle parked in a parking lot in an area known for drug activity. Police officers were patrolling the lot. They approached the vehicle and asked Respondent if he had ever been arrested. He admitted that he had been arrested for possession of cocaine, that he and his companions had used cocaine thirty minutes prior, and that he possessed cocaine in the vehicle. A search of the car produced a bindle containing 1.9 grams of cocaine and another bindle in the possession of one of Respondent's companions. After he was admonished, Respondent admitted to the officers that he and his companion had purchased the cocaine and shared it with their other companion.

23. On or about November 15, 2006, Respondent was sentenced to 3 years formal probation, a drug treatment program, and $600.00 in fines and fees for this conviction.

FOURTH CAUSE FOR DISCIPLINE

**(Unprofessional Conduct -
Unlawful Use and Possession of Controlled Substance on October 4, 2006)**

24. Grounds exist to revoke Respondent's license pursuant to section 4300, under sections 4301 (h) and (j) and 4060, for the unlawful possession and use of cocaine in a manner harmful to himself. The facts and circumstances surrounding this cause for discipline are described in paragraphs 21-23 above and are incorporated by reference herein.

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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 58735 issued to Richard Paul Mason.

2. Ordering Richard Paul Mason 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: 12/17/07

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

SD2007802463; 80170270.wpd