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

In the Matter of the Accusation Against:

Case No. 3548

JASON P. GONZALES 1100 Industrial Blvd. D27 Chula Vista, CA 91911

Pharmacy Technician Registration No. TCH 30137

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the

Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 25, 2010.

It is so ORDERED on July 26, 2010.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

la (. Wussi

STANLEY C. WEISSER Board President

-			
1	EDMUND G. BROWN JR.		
2	Attorney General of California LINDA K. SCHNEIDER		
3	Supervising Deputy Attorney General DAVID E. HAUSFELD		
4	Deputy Attorney General State Bar No. 110639		
5	110 West "A" Street, Suite 1100 San Diego, CA 92101		
6	P.O. Box 85266 San Diego, CA 92186-5266		
7	Telephone: (619) 645-2025 Facsimile: (619) 645-2061		
8	Attorneys for Complainant		
9	BEFORE THE BOARD OF PHARMACY		
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
11			
12	In the Matter of the Accusation Against:	Case No. 3548	
13	JASON P. GONZALES 1100 Industrial Blvd D27	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER	
14	Chula Vista, CA 91911	DISCHLINARY ORDER	
15	Pharmacy Technician Registration No. TCH 30137		
16			
17	Respondent.		
18			
19	IT IS HEREBY STIPULATED AND AGI	REED by and between the parties to the above-	
20	entitled proceedings that the following matters a		
21	PAR	TIES	
22	1. Virginia Herold (Complainant) is the	e Executive Officer of the Board of Pharmacy.	
23	She brought this action solely in her official capa	acity and is represented in this matter by Edmund	
24	G. Brown Jr., Attorney General of the State of California, by David E. Hausfeld, Deputy Attorney		
25	General.		
26	2. Jason P. Gonzales (Respondent) is re	epresenting himself in this proceeding and has	
27	chosen not to exercise his right to be represented		
28	///		
		1	

3. On or about July 30, 1999, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 30137 to Jason P. Gonzales (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3548 and expired on April 30, 2010.

## JURISDICTION

4. Accusation No. 3548 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on February 26, 2010.
Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3548 is attached as Exhibit A and incorporated herein by reference.

## ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 3548. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
every right set forth above.

## **CULPABILITY**

2

8. Respondent admits the truth of each and every charge and allegation in Accusation
No. 3548.

27 ////

24

1

2

3

4

5

6

7

8

9

10

11

12

13

14

28 ///

דו זמדידים

9. Respondent agrees that his Pharmacy Technician Registration is subject to discipline and he agrees to be bound by the Board of Pharmacy (Board)'s imposition of discipline as set forth in the Disciplinary Order below.

## CONTINGENCY

This stipulation shall be subject to approval by the Board of Pharmacy. Respondent 10. understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and 10 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall 12 not be disgualified from further action by having considered this matter. 13

11. The parties understand and agree that facsimile copies of this Stipulated Settlement 14 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and 15 effect as the originals. 16

This Stipulated Settlement and Disciplinary Order is intended by the parties to be an 17 12. integrated writing representing the complete, final, and exclusive embodiment of their agreement. 18 19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary 20 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a 21 writing executed by an authorized representative of each of the parties. 22

In consideration of the foregoing admissions and stipulations, the parties agree that 23 13. the Board may, without further notice or formal proceeding, issue and enter the following 24 Disciplinary Order: 25

3

26 111

1

2

3

4

5

6

7

8

9

11

- 27 111
- 28 111

## DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 30137 issued to Jason P. Gonzales (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

||

1.

1

2

3

4

5

6

7

8

0

10

## Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation.

During suspension, Respondent shall not enter any pharmacy area or any portion of any 11 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other 12 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and 13 devices or controlled substances are maintained. Respondent shall not do any act involving drug 14 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent 15 manage, administer, or assist any licensee of the board. Respondent shall not have access to or 16 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled 17 substances. Respondent shall not resume work until notified by the Board. 18

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

22

24

. Failure to comply with this suspension shall be considered a violation of probation.

- 23
- 2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within
seventy-two (72) hours of such occurrence:

4

27 || ///

28 ///

1		an arrest or issuance of a criminal complaint for violation of any provision of the
2		Pharmacy Law, state and federal food and drug laws, or state and federal controlled
3		substances laws
4		a plea of guilty or nolo contendre in any state or federal criminal proceeding to any
5		criminal complaint, information or indictment
6		a conviction of any crime
7		discipline, citation, or other administrative action filed by any state or federal agency
8		which involves Respondent's Pharmacy Technician Registration or which is related
9		to the practice of pharmacy or the manufacturing, obtaining, handling, distributing,
10		billing, or charging for any drug, device or controlled substance.
11	Fail	are to timely report any such occurrence shall be considered a violation of probation.
12	3.	Report to the Board
13	Res	pondent shall report to the Board quarterly, on a schedule as directed by the Board or its
14	designee. The report shall be made either in person or in writing, as directed. Among other	
15	requirements, Respondent shall state in each report under penalty of perjury whether there has	
16	been compliance with all the terms and conditions of probation. Failure to submit timely reports	
17	in a form as directed shall be considered a violation of probation. Any period(s) of delinquency	
18	in submission of reports as directed may be added to the total period of probation. Moreover, if	
19	the final p	probation report is not made as directed, probation shall be automatically extended until
20	such time	as the final report is made and accepted by the board.
21	4.	Interview with the Board
22	Upo	on receipt of reasonable prior notice, Respondent shall appear in person for interviews
23	with the I	Board or its designee, at such intervals and locations as are determined by the Board or
24	its design	ee. Failure to appear for any scheduled interview without prior notification to Board
25	staff, or f	ailure to appear at two (2) or more scheduled interviews with the Board or its designee
26	during th	e period of probation, shall be considered a violation of probation.
27	111	
20		

5

28 ///

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his 3 probation. Failure to cooperate shall be considered a violation of probation. 4

5

6

7

8

1

2

#### 6. Notice to Employers

During the period of probation, Respondent shall notify all present and prospective employers of the decision in case number 3548 and the terms, conditions and restrictions imposed on Respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of 9 Respondent undertaking any new employment, Respondent shall cause his direct supervisor, 10 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's 11 tenure of employment) and owner to report to the Board in writing acknowledging that the listed 12 individual(s) has/have read the decision in case number 3548 and the terms and conditions 13 imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or 14 supervisor(s) submit timely acknowledgement(s) to the Board. 15

If Respondent works for or is employed by or through a pharmacy employment service, 16 17 Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3548 in advance of the Respondent 18 commencing work at each pharmacy. A record of this notification must be provided to the Board 19 upon request. 20

21 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of Respondent undertaking any new employment by or through a pharmacy 22 23 employment service, Respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he has read the decision in case 24 25 number 3548 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely 26 27 acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"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 or in any
position for which a pharmacy technician registration is a requirement or criterion for
employment, whether the respondent is considered an employee, independent contractor or
volunteer.

9

1

2

3

## 7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,700.00. Respondent shall make said payments as follows: \$50.00 per month due and payable on the first day of each month following the effective date of the adoption by the Board of this Order, until the full amount is paid. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by Respondent shall not relieve Respondent of his responsibility to
reimburse the Board its costs of investigation and prosecution.

19

## 8. **Probation Monitoring Costs**

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

24

9.

## Status of Registration

Respondent shall, at all times while on probation, maintain an active, current pharmacy
technician registration with the Board, including any period during which suspension or probation
is tolled. Failure to maintain an active, current registration shall be considered a violation of
probation.

7

If Respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication Respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

5

20

21

1

2

3

4

## 10. Registration Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease work due to 6 7 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his pharmacy technician registration to the board for surrender. The 8 Board or its designee shall have the discretion whether to grant the request for surrender or take 9 any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of 10 the registration, Respondent will no longer be subject to the terms and conditions of probation. 11 This surrender constitutes a record of discipline and shall become a part of the Respondent's 12 license history with the Board. 13

Upon acceptance of the surrender, Respondent shall relinquish his pharmacy technician registration to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the registration sought as of the date the application for that registration is submitted to the Board.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule, if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

## 12. Tolling of Probation

Except during periods of suspension, Respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, Respondent must nonetheless comply with all terms and conditions of probation.

Should Respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which Respondent is not working for at
least 40 hours as a pharmacy technician, as defined in Business and Professions Code section
4115. "Resumption of work" means any calendar month during which Respondent is working as
a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and
Professions Code section 4115.

21

1

2

3

4

5

6

7

8

0

10

11

12

13

14

15

## 13. Violation of Probation

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.

27 If Respondent violates probation in any respect, the Board, after giving Respondent notice 28 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that

was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the registration. 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 4 automatically extended until the petition to revoke probation or accusation is heard and decided. 5

6

7

8

1

2

3

#### 14. **Completion of Probation**

Upon written notice by the Board indicating successful completion of probation, Respondent's pharmacy technician registration will be fully restored.

9

10

11

12

13

14

15

16

15.

Attend Substance Abuse Recovery Relapse Prevention and Support Groups Within thirty (30) days of the effective date of this decision, Respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of

- probation. 17
- 18

#### 16. Random Drug Screening

Respondent, at his own expense, shall participate in random testing, including but not 19 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug 20 screening program as directed by the Board or its designee. Respondent may be required to 21 participate in testing for the entire probation period and the frequency of testing will be 22 determined by the Board or its designee. At all times Respondent shall fully cooperate with the 23 Board or its designee, and shall, when directed, submit to such tests and samples for the detection 24 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the Board or 25 its designee may direct. Failure to timely submit to testing as directed shall be considered a 26 violation of probation. Upon request of the Board or its designee, Respondent shall provide 27 documentation from a licensed practitioner that the prescription for a detected drug was 28

legitimately issued and is a necessary part of the treatment of the Respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the 4 automatic suspension of work by Respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing. 6

During suspension, Respondent shall not enter any pharmacy area or any portion of or any 7 other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other 8 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and C) devices or controlled substances are maintained. Respondent shall not do any act involving drug 10 selection, selection of stock, manufacturing, compounding or dispensing; nor shall Respondent 11 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or 12 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled 13 substances. Respondent shall not resume work until notified by the Board. 14

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. 15 Subject to the above restrictions, respondent may continue to own or hold an interest in any 16 licensed premises in which he holds an interest at the time this decision becomes effective unless 17 otherwise specified in this order. 18

19

1

2

3

5

Failure to comply with this suspension shall be considered a violation of probation.

20

#### Work Site Monitor 17.

Within ten (10) days of the effective date of this decision, Respondent shall identify a work 21 22 site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor 23 reports in writing to the Board quarterly. Should the designated work site monitor determine at 24 25 any time during the probationary period that Respondent has not maintained sobriety, he shall notify the Board immediately, either orally or in writing as directed. Should Respondent change 26 27 employment, a new work site monitor must be designated, for prior approval by the Board, within 28 ten (10) days of commencing new employment. Failure to identify an acceptable initial or

replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

18. Notification of Departure

Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, Respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

8

20

25

26

27

28

1

2

3

4

5

6

7

## 19. Abstain f om Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled 9 substances, dangerous drugs and their associated paraphernalia except when the drugs are 10 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon 11 request of the Board or its designee, respondent shall provide documentation from the licensed 12 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the 13 treatment of the respondent. Failure to timely provide such documentation shall be considered a 14 violation of probation Respondent shall ensure that he is not in the same physical location as 15 individuals who are using illicit substances even if Respondent is not personally ingesting the 16 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia 17 not supported by the documentation timely provided, and/or any physical proximity to persons 18 using illicit substance: , shall be considered a violation of probation. 19

### ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 6/13/0

JASON P. GONZALES Respondent

12

1	ENDORSEMENT		
2	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully		
3	submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.		
4	Dated: <u>6/15/10</u> Respectfully Submitted		
5			
6	EDMUND G. BROWN JR. Attorney General of California		
7	LINDA K. SCHNEIDER Supervising Deputy Attorney General		
8			
9	David E. Hausfeld		
10	Deputy Attorney General Attorneys for Complainant		
11			
12	SD2009805089		
13	80461586.doc		
• 14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26 27			
27 28			
20			
	13 STIPULATED SETTLEMENT		

# Exhibit A

## Accusation No. 3548

11		
	EDMUND G. BROWN JR. Attorney General of California	
2	LINDA K. SCHNEIDER Supervising Deputy Attorney General	
3	DAVID E. HAUSFELD Deputy Attorney General	
4	State Bar No. 110639	
5	110 West "A" Street, Suite 1100 San Diego, CA 92101	
6	P.O. Box 85266 San Diego, CA 92186-5266	
7	Telephone: (619) 645-2025 Facsimile: (619) 645-2061	
8	Attorneys for Complainant	
9	BEFORE THE BOARD OF PHARMACY	
10	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11		
12	In the Matter of the Accusation Against:	Case No. 3548
12	JASON P. GONZALES	
14	1100 Industrial Blvd D27 Chula Vista, CA 95023	ACCUSATION
15	Pharmacy Technician Registration No.	
16	TCH 30137	
17	Respondent.	
18	· · · · · · · · · · · · · · · · · · ·	
19		
20	Complainant alleges:	
21	PAF	RTIES
22	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity	
23	as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.	
24	2. On or about July 30, 1999, the Board of Pharmacy issued Pharmacy Technician	
25	Registration Number TCH 30137 to Jason P. Gonzales (Respondent). The Pharmacy Technician	
26	Registration was in full force and effect at all times relevant to the charges brought herein and	
27	will expire on April 30, 2010, unless renewed.	
28	///	
		1
		Accusation

·		
1	JURISDICTION	
2	3. This Accusation is brought before the Board of Pharmacy (Board), Department of	
3	Consumer Affairs, under the authority of the following laws. All section references are to the	
4	Business and Professions Code unless otherwise indicated.	
5	4. Section 4300 (a) of the Code provides that every license issued by the Board may be	
6	suspended or revoked.	
7	5. Section 118, subdivision (b), of the Code provides that the suspension, expiration,	
8	surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a	
9	disciplinary action during the period within which the license may be renewed, restored, reissued	
10	or reinstated.	
11	STATUTORY PROVISIONS	
12	6. Section 490 of the Code provides, in pertinent part, that a Board may suspend or	
13	revoke a license on the ground that the licensee has been convicted of a crime substantially	
14	related to the qualifications, functions, or duties of the business or profession for which the	
15	license was issued.	
16	7. Section 493 of the Code states:	
17	Notwithstanding any other provision of law, in a proceeding conducted by a	
18	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	
19	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	
20	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,	
21	and the board may inquire into the circumstances surrounding the commission of	
22	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	
23	question. As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and	
24	'registration.'	
25	8. Section 4301 of the Code states:	
26	The board shall take action against any holder of a license who is guilty of	
27 28	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:	
	2	
	Accusatio	

.

(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.

(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.

(1) The conviction of a crime substantially related to the qualifications. functions, and duties of a licensee under this chapter. ... [T]he 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.

### **REGULATORY PROVISIONS**

21

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

22

23

24

25

26

27

28

. . . .

9. 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.

10. California Code of Regulations, title 16, section 1769, states, in pertinent part: 1 2 (b) When considering the suspension or revocation of a facility or a personal 3 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 4 eligibility for a license will consider the following criteria: 5 (1) Nature and severity of the act(s) or offense(s). 6 (2) Total criminal record. 7 (3) The time that has elapsed since commission of the act(s) or 8 offense(s). 9 (4) Whether the licensee has complied with all terms of parole, .10 probation, restitution or any other sanctions lawfully imposed against the licensee. 11 (5) Evidence, if any, of rehabilitation submitted by the licensee. 12 COSTS 13 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the 14 administrative law judge to direct a licentiate found to have committed a violation or violations of 15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and 16 enforcement of the case. 17 FIRST CAUSE FOR DISCIPLINE 18 (January 28, 2004 Criminal Conviction for DUI on October 13, 2003) 19 12. Respondent has subjected his license to disciplinary action under sections 490 and 20 4301, subdivision (1) of the Code, in that Respondent was convicted of a crime that is 21 substantially related to the qualifications, functions, and duties of a pharmacy technician. The 22 circumstances are as follows. 23 13. On or about January 28, 2004, in a criminal proceeding entitled *People of the State of* 24 California v. Jason Patrick Gonzales, in San Diego County Superior Court, case number 25 S181201, Respondent was convicted on his plea of guilty of violating Vehicle Code section 2.6 23152, subdivision (b), driving a vehicle while having a blood alcohol content in excess of .08 27 28

Accusation

percent, a misdemeanor. Respondent's plea included an enhancement under Vehicle Code section 23578 in that his blood alcohol content was in excess of .20 percent.

As a result of the conviction, on or about January 28, 2004, Respondent was
sentenced to five years summary probation, completion of a six month First Offender Alcohol
Program, 5 days in a Public Service Program and payment of fees and fines.

15. The facts that led to the conviction were that on or about October 13, 2003,
Respondent unlawfully drove a motor vehicle while having a blood alcohol content by weight in
excess of .08 percent, to wit, .27 percent.

## 9

10

1

2

## (Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

SECOND CAUSE FOR DISCIPLINE

11 16. Respondent has subjected his license to disciplinary action under section 4301, 12 subdivision (h) of the Code in that on or about October 13, 2003, as described in the First Cause 13 for Discipline, above, Respondent used alcoholic beverages to an extent or in a manner that was 14 potentially dangerous or injurious to himself and to others in that he operated a motor vehicle 15 while impaired by alcohol. Such unprofessional conduct posed a significant threat to public 16 safety.

## THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)

17. Respondent has subjected his license to disciplinary action under section 4301,
 subdivision (k) of the Code in that on or about October 13, 2003, as described in the First Cause
 for Discipline, above, Respondent was convicted of a criminal offense involving the consumption
 and/or self-administration of alcohol, which constitutes unprofessional conduct.

23

17

18

## FOURTH CAUSE FOR DISCIPLINE

(July 16, 2007 Criminal Conviction for DUI with Bodily Injury on June 7, 2007)
18. Respondent has subjected his license to disciplinary action under sections 490 and
4301, subdivision (1) of the Code, in that Respondent was convicted of a crime that is
substantially related to the qualifications, functions, and duties of a pharmacy technician. The
circumstances are as follows.

On or about July 16, 2007, in a criminal proceeding entitled People of the State of 19. California v. Jason Patrick Gonzales, in San Diego County Superior Court, case number 2 CS211551, Respondent was convicted on his plea of guilty of violating Vehicle Code section 3 23153, subdivision (a), driving a vehicle while under the influence causing bodily injury to 4 another, a felony. 5

As a result of the conviction, on or about July 16, 2007, Respondent was sentenced to 20. five years formal probation, completion of a Multiple Offender Drinking Driver Program, attend a MADD program, 365 days in county jail stayed, to be served in a work furlough program, and payment of fees and fines.

The facts that led to the conviction were that on or about June 7, 2007, a patrol officer 21. 10 with the Chula Vista Police Department was called to the scene of an accident in Chula Vista. 11 California. Respondent was observed seated on the ground leaning against his vehicle, which had 12 been involved in a collision with another vehicle, causing injuries. The officer noted that upon 13 contact with Respondent he had red, watery and bloodshot eyes, his speech was slurred, mumbled 14 and confused, and he had a moderate odor of an alcoholic beverage on his breath. Respondent 15 would fall asleep between questions while the officer interviewed him. No field sobriety tests 16 were conducted since Respondent could not stand on his own. Based on his observations, the 17 officer arrested Respondent for driving under the influence of alcohol. 18

19

20

1

6

7

8

9

## FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

Respondent has subjected his license to disciplinary action under section 4301, 21 22. subdivision (h) of the Code in that on or about June 7, 2007, as described in the Fourth Cause for 22 Discipline, above, Respondent used alcoholic beverages to an extent or in a manner that was 23 potentially dangerous or injurious to himself and to others in that he operated a motor vehicle 24 while impaired by alcohol, and caused a traffic accident, injuring another. Such unprofessional 25 conduct posed a significant threat to public safety. 26

27 111

1	SIXTH CAUSE FOR DISCIPLINE	
2	(Unprofessional Conduct - Conviction of Alcohol-Related Criminal Offense)	
3	23. Respondent has subjected his license to disciplinary action under section 4301,	
4	subdivision (k) of the Code in that on or about June 7, 2007, as described in the Fourth Cause for	
5	Discipline, above, Respondent was convicted of a criminal offense involving the consumption	
6	and/or self-administration of alcohol, which constitutes unprofessional conduct.	
7	PRAYER	
8	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,	
9	and that following the hearing, the Board of Pharmacy issue a decision:	
10	1. Revoking or suspending Pharmacy Technician Registration Number TCH 30137,	
11	issued to Jason P. Gonzales.	
12	2. Ordering Jason P. Gonzales to pay the Board of Pharmacy the reasonable costs of the	
13	investigation and enforcement of this case, pursuant to Business and Professions Code section	
14	125.3;	
15	3. Taking such other and further action as deemed necessary and proper.	
16		
17		
18	DATED: $2/3/(0)$	
19	VIRGINIA HEROLD	
20	Executive Officer Board of Pharmacy	
21	Department of Consumer Affairs State of California	
22	Complainant	
23	SD2009805089	
24	80415459.doc	
25		
26		
27		
28		
	7	