

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

In the Matter of the Accusation Against:

JOSEPH A. SHEPPARD

Pharmacy Technician Registration No. TCH 61325

Respondent.

Case No. 3561

OAH No. 2011040644

DECISION AND ORDER

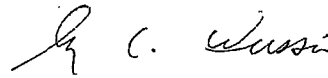
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on March 14, 2012.

It is so ORDERED on February 13, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, heard this matter in Sacramento, California on December 13, 2011.

Elena L. Almanzo, Deputy Attorney General, represented Virginia K. Herold (complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs (Department).

No appearance was made by or on behalf of respondent Joseph A. Sheppard.

Evidence was received, the record was closed, and the matter was submitted for decision on December 13, 2011.

SUMMARY

Complainant seeks to discipline respondent's registration on the grounds that respondent was convicted of petty theft with a prior, possessed a controlled substance, and used alcohol or drugs in a manner or to an extent dangerous to himself or others. Cause exists to discipline his registration. Respondent failed to introduce evidence of his rehabilitation. Therefore, his registration is revoked.

FACTUAL FINDINGS

1. On March 29, 2005, the Board issued Original Pharmacy Technician Registration Number TCH 61325 (license) to respondent. The license will expire on December 31, 2012, unless renewed or revoked. There is no history of prior discipline of the license.

2. On January 5, 2011, complainant, acting solely in her official capacity as Executive Officer of the Board, filed an accusation seeking to discipline respondent's license on the grounds that respondent was convicted of petty theft with a prior, possessed a controlled substance, and used alcohol or drugs in a manner or to an extent dangerous to himself or others.

3. Respondent signed and returned a Notice of Defense, which is dated February 26, 2011. On August 10, 2011, a Notice of Hearing was sent to respondent at the address provided in his Notice of Defense. The Notice of Hearing was sent by both certified mail and first class mail. The former was returned as "unclaimed," but the latter was not returned. He was properly served with the Notice of Hearing.¹

4. On December 12, 2011, respondent requested a continuance of the hearing noticed for the following day. His request was denied, and he was notified of that outcome by email on December 12.

5. This matter was called on the date and at the time and location specified in the Notice of Hearing. Respondent did not appear, no one appeared on his behalf, and an evidentiary hearing was conducted as a default proceeding pursuant to Government Code section 11520.

Criminal Conviction

6. On January 30, 2009, in the Superior Court of the State of California, in and for the County of Santa Clara, Case No. BB836922, respondent pled nolo contendere to, and was convicted of, a felony violation of Penal Code section 666, petty theft with a prior. Sentencing was continued to February 26, 2009. On that date, imposition of sentence was suspended, and respondent was placed on three years formal probation. He was ordered to spend 60 days in the Santa Clara County jail and pay fines, penalties, and assessments in the total sum of \$819.75, \$220 of which was suspended pending revocation of his probation. The court further stated: "The defendant not to be employed by nor do volunteer work for a

¹ See, *Bear Creek Master Association v. Edwards* (2005) 130 Cal.App.4th 1470, 1487 [a party cannot defeat service by registered mail by simply refusing to sign for the item being served]; see also, Code Civ. Proc., § 11 [service by registered mail may be accomplished by sending the item by certified mail].)

person, business, or organization which involves the handling or distribution of prescription medication is recommended.”

7. The factual basis for respondent’s conviction arose out of his arrest by the Mountain View Police Department on October 29, 2008.² On that date, Officer Motomura responded to Safeway for the report of an employee being detained for theft. Upon his arrival, he was told by a loss prevention agent for Safeway that respondent was working as a part-time, on-call substitute pharmacy technician that day and was caught stealing three Cialis pills, 18 50 mg Viagra pills, and 10 100 mg Viagra pills. There was no evidence that respondent had any alcohol in his system when he stole the drugs.

Conviction of More Than One Misdemeanor or Any Felony Involving the Use, Consumption, or Self-administration of Any Dangerous Drug or Alcoholic Beverage

8. Complainant alleged that respondent was convicted of more than one misdemeanor or of a felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage. But as discussed in Factual Finding 6, respondent was convicted of felony petty theft with a prior. And while he stole Cialis and Viagra, both of which are “dangerous drugs” (Bus. & Prof. Code, § 4022), there was no evidence that he used either drug or that he stole those drugs with the intent to use them at a later time. Furthermore, the conviction did not involve the use or consumption of an alcoholic beverage. (Factual Finding 7.) Therefore, there is insufficient evidence to support a factual finding that respondent was convicted of more than one misdemeanor or of any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage.

Possession of a Controlled Substance

9. Complainant alleged that respondent possessed a controlled substance without a lawful prescription when the California Highway Patrol (CHP) arrested him for suspicion of driving under the influence of alcohol on February 16, 2008. During a search incident to the arrest, the CHP officer found a white, powdery substance in a plastic bag in one of respondent’s pockets. The substance tested positive for cocaine, a Schedule II controlled substance. (Health & Saf. Code, § 11055, subd. (b)(6).) While the evidence did not establish whether or not respondent had a lawful prescription for the cocaine, the manner in which he held it (in a small plastic baggy in his pocket) raises a reasonable inference that he did not, and he presented no evidence to the contrary. Therefore, respondent possessed a controlled substance without a lawful prescription on February 16, 2008.

² The incident report was admitted, without objection, for all purposes. (See, Gov. Code, § 11513, subd. (d) [hearsay evidence is admissible to support a finding in the absence of an objection].)

10. Complainant also alleged that respondent possessed a controlled substance without a lawful prescription when he was arrested for petty theft. However, no evidence was introduced that either Cialis or Viagra, both of which are “dangerous drugs” (Factual Finding 8), is a controlled substance. Therefore, there is insufficient evidence to support a factual finding that respondent was in possession of a controlled substance when he was arrested for stealing the Cialis and Viagra.

Self-administration of a Controlled Substance or the Use of a Dangerous Drug or Alcoholic Beverage

11. Complainant alleged that respondent used alcohol or dangerous drugs in a manner dangerous to himself or others when he was arrested for petty theft. While Cialis and Viagra are both “dangerous drugs” (Factual Finding 8), there was no evidence that he used either drug or stole either of them with the intent to use them at a later time. Nor was there any evidence that he had alcohol in his system at the time of his arrest. (Factual Finding 7.) The accusation did not allege respondent’s consumption of an alcoholic beverage on February 16, 2008 (Factual Finding 9) as a basis for discipline. (See, *Wheeler v. State Board of Forestry* (1983) 144 Cal.App.3d 522, 526-527 [the order of discipline must be based on the law and facts alleged in the accusation].)

Factors in Aggravation, Mitigation, and Rehabilitation

12. The Department has adopted criteria for consideration when determining whether a licensee has been rehabilitated since committing the acts for which discipline is sought. One such criterion which is relevant here is the lapse of time since the acts were committed. (Cal. Code Regs., tit. 16, § 1769, subd (b)(3); see, *In re Andreani* (1939) 14 Cal.2d 736, 749 [the existence of rehabilitation is difficult to establish affirmatively, “but its nonexistence may be ‘proved’ by a single act.”])

Respondent was arrested for petty theft with a prior on October 29, 2008. (Factual Finding 7.) He was convicted of that crime on January 30, 2009. (Factual Finding 6.) He has more than one month remaining on his term of probation. Therefore, there has been an insufficient amount of time to fully assess his rehabilitation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [an accurate assessment of a criminal’s rehabilitation necessarily requires a period of evaluation while he is no longer on probation or parole].)

13. As discussed below, cause exists to discipline respondent’s license based on his criminal conviction for petty theft with a prior and his possession of cocaine without a lawful prescription. He failed to establish that he has been sufficiently rehabilitated such that the Board can be confident that he can safely engage in his licensed duties, even on a probationary basis, for the reasons discussed in Factual Finding 12. The fact that he used his licensed status to gain access to the drugs he stole demonstrates that he cannot be trusted to engage in licensed activities in a manner which is consistent with public safety, health, and welfare. Therefore, his license should be revoked.

Costs of Enforcement

14. Complainant requested costs of investigation and prosecution in the total amount of \$1,877.50 pursuant to Business and Professions Code section 125.3. A Certification of Prosecution Costs: Declaration of Elena L. Almanzo was introduced at the hearing. Attached as Exhibit A to the Certification is a document entitled Matter Time Activity by Professional Type. That document shows that the Board has incurred attorney's fees in the amount of \$1,877.50 for the time Ms. Almanzo and her supervisor, Arthur D. Taggart, have spent working on this matter. Such evidence is prima facie evidence of the reasonableness of the costs incurred. (Bus. & Prof. Code, § 1125.3, subd. (c).)

Respondent did not object to the costs as unreasonable, and no evidence of the unreasonableness of the costs incurred was introduced.

The costs that Complainant seeks are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 6 below.

LEGAL CONCLUSIONS

1. The Board may discipline a license if the holder has engaged in unprofessional conduct. "Unprofessional conduct" includes being convicted of a crime that is substantially related to the qualifications, functions, or duties of a licensed pharmacy technician. (Bus. & Prof. Code, § 4301, subd. (l); see also, Bus. & Prof. Code, § 490, subd. (a).) Respondent was convicted of petty theft with a prior. (Factual Finding 6.) The factual basis for his conviction establishes that the underlying crime is substantially related to his licensed duties – it was because of his licensed status that he had access to the drugs stolen. (Factual Finding 7; see, Cal. Code Regs., tit. 16, § 1770 [". . . 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."]) Therefore, cause exists to discipline his license pursuant to Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l), individually and collectively.

2. "Unprofessional conduct" also includes "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." (Bus. & Prof. Code, § 4301, subd. (k).) While respondent's petty theft conviction was a felony and he stole dangerous drugs (Factual Findings 6 and 7; see, Bus. & Prof. Code, § 4022), there was no evidence that his crime involved "the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances." (Factual Finding 8.) Therefore, no cause exists to discipline his license pursuant to Business and Professions Code section 4301, subdivision (k).

3. "Unprofessional conduct" also includes "the violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs." (Bus. & Prof. Code, § 4301, subd. (j); see also, Bus. & Prof. Code, § 4301, subd. (o) [the violation of any laws governing pharmacies constitutes unprofessional conduct].) It is unlawful for a person to be in possession of a controlled substance without a lawful prescription. (Bus. & Prof. Code, § 4060.) Respondent was in possession of cocaine, a controlled substance, and the evidence supports a reasonable inference, which he did not rebut, that he did not have a lawful prescription. (Factual Finding 9.)

Respondent also was in possession of the dangerous drugs Cialis and Viagra when he was arrested for petty theft. (Factual Findings 7 and 8.) But there was no evidence that either drug is a controlled substance. (Factual Finding 10.) And while the violation of any law regulating dangerous drugs is grounds for discipline under Business and Professions Code section 4301, subdivision (j), the allegations in the accusation were limited to respondent's possession of controlled substances. Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (j) and (o), individually and collectively, as each relates to Business and Professions Code section 4060, based only on his possession of cocaine.

4. "Unprofessional conduct" also includes "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." (Bus. & Prof. Code, § 4301, subd. (h).) For the reasons discussed in Factual Finding 11, no cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (h).

5. For the reasons discussed in Legal Conclusions 1 and 3, individually and collectively, cause exists to discipline respondent's license. When all of the relevant evidence is considered, his license should be revoked for the reasons explained in Factual Findings 12 and 13.

Cost Recovery

6. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) whether the licensee has been successful at hearing in getting charges dismissed or reduced; 2) the licensee's subjective good faith belief in the merits of his or her position; 3) whether the licensee has raised a colorable challenge to the proposed discipline; 4) the financial ability of the licensee to pay;

and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct.

As set forth in Factual Finding 14, complainant presented prima facie evidence that the \$1,877.50 in costs it incurred investigating and prosecuting this matter is reasonable. Respondent presented no evidence to rebut such evidence. Therefore, complainant's request for costs in the amount of \$1,877.50 is reasonable and is awarded as set forth in the Order below.

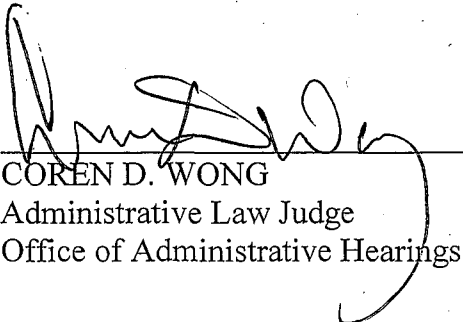
ORDER

1. Pharmacy technician license number TCH 61325 issued to respondent Joseph A. Sheppard is REVOKED. Respondent shall relinquish his technician license to the Board within ten (10) days of the effective date of this Decision. Pursuant to Business and Professions Code section 4309, subdivision (a)(1), respondent may not reapply or petition the Board for reinstatement of his revoked technician license for three (3) years from the effective date of this Decision.

2. A condition of any reinstatement of respondent's revoked technician license shall be that he is certified as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board.

3. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,877.50 within fifteen (15) days of the effective date of this Decision.

DATED: January 5, 2012


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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8
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. 3561

13
14 **JOSEPH A. SHEPPARD**
3755 Argonaut
15 Rocklin, CA 95677

A C C U S A T I O N

16 **Pharmacy Technician Registration**
17 **No. TCH 61325**

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

- 21 1. Virginia Herold (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
23 2. On or about March 29, 2005, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 61325 to Joseph A. Sheppard (Respondent). The Pharmacy
25 Technician Registration was in full force and effect at all times relevant to the charges brought
26 herein and will expire on December 31, 2012, unless renewed.

27 ///
28 ///

JURISDICTION

1
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 of the Code states:

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

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

9 (1) Suspending judgment.

10 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

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

19 (1) Medical or psychiatric evaluation.

20 (2) Continuing medical or psychiatric treatment.

21 (3) Restriction of type or circumstances of practice.

22 (4) Continuing participation in a board-approved rehabilitation program.

23 (5) Abstention from the use of alcohol or drugs.

24 (6) Random fluid testing for alcohol or drugs.

25 (7) Compliance with laws and regulations governing the practice of
pharmacy.

26 (d) The board may initiate disciplinary proceedings to revoke or suspend
27 any probationary certificate of licensure for any violation of the terms and conditions
of probation. Upon satisfactory completion of probation, the board shall convert the
28 probationary certificate to a regular certificate, free of conditions.

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

6 5. Section 4301 of the Code states in pertinent part:

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

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

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

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

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

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

26 (l) The conviction of a crime substantially related to the qualifications,
27 functions, and duties of a licensee under this chapter. The record of conviction of a
28 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.

(o) Violating or attempting to violate, directly or indirectly, or assisting in
or abetting the violation of or conspiring to violate any provision or term of this
chapter or of the applicable federal and state laws and regulations governing

1 pharmacy, including regulations established by the board or by any other state or
2 federal regulatory agency.

3 6. Section 125.3 of the Code states, in pertinent part, that the Board may request the
4 administrative law judge to direct a licentiate found to have committed a violation or violations of
5 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
6 enforcement of the case.

7 7. Section 4060 of the Code states:

8 No person shall possess any controlled substance, except that furnished to
9 a person upon the prescription of a physician, dentist, podiatrist, optometrist,
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant
11 to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a
12 nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to
13 Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist
14 pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
15 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section
16 shall not apply to the possession of any controlled substance by a manufacturer,
17 wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist,
18 veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or
19 physician assistant, when in stock in containers correctly labeled with the name and
20 address of the supplier or producer.

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

24 8. Section 4022 of the Code states:

25 "Dangerous drug" or "dangerous device" means any drug or device
26 unsafe for self-use in humans or animals, and includes the following: (a) Any drug
27 that bears the legend: "Caution: federal law prohibits dispensing without
28 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 490 of the Code provides, in pertinent part, that a board may suspend or
revoke a license on the ground that the licensee has been convicted of a crime substantially
related to the qualifications, functions, or duties of the business or profession for which the
license was issued.

///

1 **DRUGS**

2 10. "Cocaine" is a Schedule II controlled substance as designated by Health and
3 Safety Code section 11055(b)(6).

4 11. "Viagra" is a dangerous drug as defined by Business and Professions Code section
5 4022.

6 12. "Cialis" is a dangerous drug as defined by Business and Professions Code section
7 4022.

8 **FIRST CAUSE FOR DISCIPLINE**
9 **(Conviction)**

10 13. Respondent is subject to disciplinary action under section 490 and 4301,
11 subdivisions (k) and (l) in that he was convicted of a crime substantially related to the practice of
12 a pharmacy technician. The circumstances are as follows:

13 14. On or about January 30, 2009, in *People v. Joseph Anthony Sheppard*, Superior
14 Court of California, County of Santa Clara; Case No. BB836922, Respondent was convicted on
15 his plea of guilty to a violation of no contest to a violation of Penal Code section 666 (petty theft
16 with specified priors).

17 15. The circumstances were that on or about October 29, 2008, Respondent was
18 working at the Safeway Pharmacy in Mountain View when he was suspected of stealing Viagra
19 and Cialis. Respondent admitted to Safeway personnel that he had taken Viagra and Cialis from
20 three different Safeway stores.

21 **SECOND CAUSE FOR DISCIPLINE**
22 **(Possession of a Controlled Substance)**

23 16. Respondent is subject to disciplinary action under sections 4060 and 4301
24 subdivisions (j) and (o) in that he illegally possessed controlled substances. The circumstances
25 are set forth above in paragraph 14 and 15, above and as follows:

26 17. On or about February 16, 2008, Respondent was observed driving at a high rate of
27 speed and was stopped by the California Highway Patrol. Respondent was observed to be under
28

1 the influence of alcohol. A search incident to arrest uncovered that Respondent was in possession
2 of cocaine.

3 **THIRD CAUSE FOR DISCIPLINE**
4 **(Use of Alcohol or Drugs in a Manner Dangerous to Self or Others)**

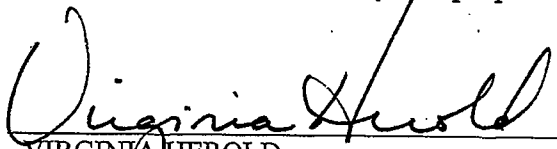
5 18. Respondent is subject to disciplinary action under section 4301(h) in that he used
6 alcohol or drugs in a manner dangerous to himself or others as set forth in paragraphs 14 and 15
7 above.

8 **PRAYER**

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

- 11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 61325,
12 issued to Joseph A. Sheppard;
- 13 2. Ordering Joseph A. Sheppard to pay the Board of Pharmacy the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3; and,
- 16 3. Taking such other and further action as deemed necessary and proper.

17 DATED: 1/5/11



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

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