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6 **BEFORE THE**
7 **BOARD OF PHARMACY**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke
11 Probation Against:

Case No. 3615

12 **JOE LUIS SOSA**
13 **P.O. Box 1893**
14 **Hanford, CA 93232**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

15 **Pharmacy Technician Registration No. TCH**
16 **32591**

Respondent.

17 FINDINGS OF FACT

18 1. On or about March 22, 2010, Complainant Virginia Herold, in her official capacity as
19 the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition
20 to Revoke Probation No. 3615 against Joe Luis Sosa (Respondent) before the Board of Pharmacy.

21 2. On or about March 10, 2000, the Board of Pharmacy (Board) issued Pharmacy
22 Technician Registration No. TCH 32591 to Respondent. The Pharmacy Technician Registration
23 expired on January 31, 2008, and has not been renewed.

24 3. In a disciplinary action entitled "In the Matter of Accusation Against Joe L. Sosa,"
25 Case No. 2971, the Board issued a decision, effective February 13, 2007, in which Respondent's
26 Pharmacy Technician Registration was revoked. However, the revocation was stayed and
27 Respondent was placed on probation for a period of five (5) years with certain terms and
28 conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

1 4. On or about April 2, 2010, Anna A. Carpenter, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of the Petition to Revoke Probation No.
3 3615, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
5 which was and is: P.O. Box 1893, Hanford, CA 93232.

6 5. A copy of the Petition to Revoke Probation is attached as Exhibit A, and is
7 incorporated herein by reference.

8 6. Service of the Petition to Revoke Probation was effective as a matter of law under the
9 provisions of Government Code section 11505, subdivision (c).

10 7. Business and Professions Code section 118 states, in pertinent part:

11 (b) The suspension, expiration, or forfeiture by operation of law of a license
12 issued by a board in the department, or its suspension, forfeiture, or cancellation by
13 order of the board or by order of a court of law, or its surrender without the written
14 consent of the board, shall not, during any period in which it may be renewed,
15 restored, reissued, or reinstated, deprive the board of its authority to institute or
continue a disciplinary proceeding against the licensee upon any ground provided by
law or to enter an order suspending or revoking the license or otherwise taking
disciplinary action against the license on any such ground.

16 8. Government Code section 11506 states, in pertinent part:

17 (c) The respondent shall be entitled to a hearing on the merits if the respondent
18 files a notice of defense, and the notice shall be deemed a specific denial of all parts
19 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

20 9. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of
22 Petition to Revoke Probation No. 3615.

23 10. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.
28

1 11. Pursuant to its authority under Government Code section 11520, the Board finds
2 Respondent is in default. The Board will take action without further hearing and, based on the
3 evidence on file herein, finds that the allegations in Petition to Revoke Probation No. 3615 are
4 true.

5 DETERMINATION OF ISSUES

6 1. Based on the foregoing findings of fact, Respondent Joe Luis Sosa has subjected the
7 probation granted in Board Case No. 2971 to revocation, thereby, subjecting his Pharmacy
8 Technician Registration No. TCH 32591 to the disciplinary order stayed in Board Case No. 2971.

9 ~~2. A copy of the Petition to Revoke Probation is attached.~~

10 3. The agency has jurisdiction to adjudicate this case by default.

11 4. The Board of Pharmacy is authorized to revoke the probation that was granted in
12 Board Case No. 2971, thereby imposing the disciplinary order that was stayed, revoking
13 Respondent's Pharmacy Technician Registration, based upon the following violations alleged in
14 the Petition to Revoke Probation:

15 a. Respondent violated Probation Condition 2 in Board Case No. 2971, which required
16 Respondent to obey all state and federal laws and regulations substantially related to or governing
17 the practice of pharmacy. Specifically, Respondent failed to comply with Probation Condition 2,
18 in that Respondent violated Business and Professions Code section 4301, subdivisions (h) and (l),
19 and Vehicle Code section 23152, subdivision (b) (driving under the influence with .08 BAC or
20 higher). On or about August 12, 2008, in the criminal case entitled *The People of the State of*
21 *California vs. Joe Luis Sosa, Superior Court of California, County of Fresno, Case No.*
22 *M08800575*, Respondent was convicted on his plea of nolo contendere to one (1) count of
23 violating Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found that
24 Respondent's blood alcohol level was .12, and placed Respondent on three (3) years probation
25 subject to terms and conditions, including the attendance of a six (6) month Level 1-3 First
26 Offender Alcohol Program.

27 b. Respondent violated Probation Condition 21 in Board Case No. 2971, which required
28 that Respondent abstain from the use of alcohol. Specifically, Respondent used alcohol, as more

1 fully discussed in subparagraph (a), above, which is herein incorporated by reference as set forth
2 in whole.

3 c. Respondent violation Probation Condition 3 in Board Case No. 2971, which required
4 Respondent to appear before the Board or its designee when requested. Specifically, Respondent
5 failed to appear before the Board or its designee as requested on the following dates: April 11,
6 2007, May 10, 2007, and July 5, 2007. Respondent first appeared before the Board or its
7 designee as requested on or about February 21, 2008.

8 d. Respondent violated Probation Condition 7 in Board Case No. 2971, in that
9 ~~Respondent failed to pay cost recovery to the Board. Respondent was Ordered to pay the costs of~~
10 investigation and prosecution of Board Case No. 2971, in the amount of \$5,334.75

11 e. Respondent violated Probation Condition 9 in Board Case No. 2971, which required
12 Respondent to maintain an active registration. Respondent's Pharmacy Technician Registration
13 expired on January 31, 2008, and has not been renewed.

14 f. Respondent violated Probation Condition 17 in Case No. 2971, which required
15 Respondent, within thirty (30) days of the effective date of the Board's final Decision, to begin
16 regular attendance of a Board-approved, recognized and established substance abuse recovery
17 support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, Cocaine
18 Anonymous, etc.), at the rate of at least one group meeting per week. Additionally, Probation
19 Condition 17 required Respondent to submit signed and dated documentation confirming
20 attendance with each quarterly report for the first three (3) years of probation. Respondent has
21 failed to submit documentation and proof of attendance of a Board-approved recognized and
22 established substance abuse recovery support group in California.

23 RECORD

24 The record upon which this Default Decision and Order are based is located at the
25 Sacramento headquarters of the Board.

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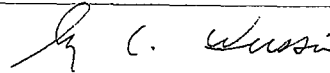
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 32591, heretofore issued to Respondent Joe Luis Sosa, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 5, 2010.

It is so ORDERED July 6, 2010.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

50629857.DOC
DOJ docket number:LA2010600176

Attachment:

Exhibit A: Petition to Revoke Probation No. 3615

Exhibit A
Petition to Revoke Probation No. 3615

1 EDMUND G. BROWN JR.
Attorney General of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 SCOTT J. HARRIS
Deputy Attorney General
4 State Bar No. 238437
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-2554
6 Facsimile: (213) 897-2804
Attorneys for Complainant

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

10 In the Matter of the Petition to Revoke
11 Probation Against:

Case No. 3615

12 **JOE LUIS SOSA**
13 **P.O. Box 1893**
Hanford, CA 93232

PETITION TO REVOKE PROBATION

14 **Pharmacy Technician Registration No.**
15 **TCH 32591**

16 One.

17
18 Complainant alleges:

19 PARTIES

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

23 2. On or about March 10, 2000, the Board issued Pharmacy Technician Registration
24 Number TCH 32591 to Joe Luis Sosa (Respondent). The Pharmacy Technician Registration
25 expired on January 31, 2008, and has not been renewed.

26 3. In a disciplinary action entitled "In the Matter of Accusation Against Joe L. Sosa,"
27 Case No. 2971, the Board issued a decision, effective February 13, 2007, in which Respondent's
28 Pharmacy Technician Registration was revoked. However, the revocation was stayed and

1 Respondent was placed on probation for a period of five (5) years with certain terms and
2 conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

3 JURISDICTION

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

7 5. Section 4300 of the Code states:

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

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

12 "(1) Suspending judgment.

13 "(2) Placing him or her upon probation.

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

15 "(4) Revoking his or her license.

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

18

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

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

28 \\\

1 6. Section 4301 of the Code states:

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

5

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

11

12 "(l) The conviction of a crime substantially related to the qualifications, functions, and
13 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
14 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
15 substances or of a violation of the statutes of this state regulating controlled substances or
16 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
17 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
18 The board may inquire into the circumstances surrounding the commission of the crime, in order
19 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
20 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
21 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
22 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
23 of this provision. The board may take action when the time for appeal has elapsed, or the
24 judgment of conviction has been affirmed on appeal or when an order granting probation is made
25 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
26 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
27 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
28 indictment."

1 7. Section 118, subdivision (b), of the Code provides that the expiration or suspension of
2 a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during
3 the period within which the license may be renewed, restored, reissued or reinstated.

4 FIRST CAUSE TO REVOKE PROBATION

5 (Failure to Obey Laws)

6 8. At all times after the effective date of Respondent's probationary period in Board
7 Case No. 2971, Condition 2 required Respondent to obey all state and federal laws and
8 regulations substantially related to or governing the practice of pharmacy.

9 9. Respondent's probation is subject to revocation because he failed to comply with
10 Probation Condition 2, in that Respondent violated Code section 4301, subdivisions (h) and (l),
11 and Vehicle Code section 23152, subdivision (b) (driving under the influence with .08 BAC or
12 higher). Specifically, on or about August 12, 2008, in the criminal case entitled *The People of the*
13 *State of California vs. Joe Luis Sosa*, Superior Court of California, County of Fresno, Case No
14 M08800575, Respondent was convicted on his plea of nolo contendere to one count of violating
15 Vehicle Code section 23152, subdivision (b), a misdemeanor. The court found that Respondent's
16 blood alcohol level was .12, and placed Respondent on three (3) years probation subject to terms
17 and conditions, including the attendance of a six (6) month Level 1-3 First Offender Alcohol
18 Program.

19 SECOND CAUSE TO REVOKE PROBATION

20 (Failure to Abstain from Use of Alcohol)

21 10. At all times after the effective date of Respondent's probationary period in Board
22 Case No. 2971, Condition 21, in pertinent part, provided that Respondent abstain from all alcohol
23 and drug use.

24 11. Respondent's probation is subject to revocation because he failed to comply with
25 Probation Condition 21, in that Respondent used alcohol, as more fully discussed in paragraph 9,
26 above, which is herein incorporated by reference as set forth in whole.

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1 THIRD CAUSE TO REVOKE PROBATION

2 (Failure to Report Quarterly to the Board)

3 12. At all times after the effective date of Respondent's probationary period in Board
4 Case No. 2971, Condition 3 required Respondent to report to the Board quarterly, either orally or
5 in writing, as directed.

6 13. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition 3, in that Respondent failed to appear before the Board or its designee as
8 requested on the following dates: April 11, 2007, May 10, 2007, and July 5, 2007. Respondent
9 first appeared before the Board or its designee as requested on or about February 21, 2008.

10 FOURTH CAUSE TO REVOKE PROBATION

11 (Failure to Pay Cost Recovery)

12 14. At all times after the effective date of Respondent's probationary period in Board
13 Case No. 2971, Condition 7 required Respondent to pay the costs of investigation and prosecution
14 of Board Case No. 2971, in the amount of \$5,334.75. The cost recovery was to be paid pursuant
15 to a reasonable schedule of payments approved by the Board.

16 15. Respondent's probation is subject to revocation because he failed to comply with
17 Probation Condition 7, in that Respondent has failed to any pay cost recovery to the Board.

18 FIFTH CAUSE TO REVOKE PROBATION

19 (Failure to Maintain an Active License)

20 16. At all times after the effective date of Respondent's probationary period in Board
21 Case No. 2971, Condition 9 required Respondent to maintain an active and current Pharmacy
22 Technician Registration/Certification at all times while on probation.

23 17. Respondent's probation is subject to revocation because he failed to comply with
24 Probation Condition 9, in that Respondent's Pharmacy Technician Registration expired on
25 January 31, 2008, and has not been renewed.

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SIXTH CAUSE TO REVOKE PROBATION

(Failure to Submit Proof of Attendance of Substance Abuse Programs)

18. At all times after the effective date of Respondent's probationary period in Board Case No. 2971, Condition 17 required Respondent, within thirty (30) days of the effective date of the Board's final Decision, to begin regular attendance of a Board-approved, recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous, Cocaine Anonymous, etc.), at the rate of at least one group meeting per week. Additionally, Condition 17 required Respondent to submit signed and dated documentation confirming attendance with each quarterly report for the first three (3) years of probation.

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 17, in that Respondent has failed to submit documentation and proof of attendance of a Board-approved recognized and established substance abuse recovery support group in California.

PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 2971 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 32591 issued to Joe Luis Sosa;

2. Revoking or suspending Pharmacy Technician Registration No. TCH 32591, issued to Joe Luis Sosa;

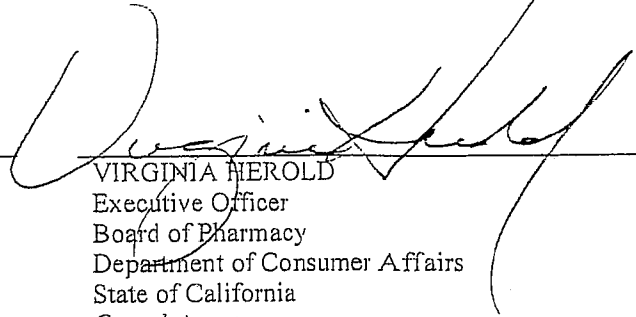
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3. Taking such other and further action as deemed necessary and proper.

DATED:

3/22/10



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

LA2010600176
60520468.doc

Exhibit A
Decision and Order No. 2971

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

In the Matter of the Petition for Reconsideration
Against:

Case No. 2971

OAH No. L2006060342

JOE L. SOSA
P. O. BOX 3374
Manhattan Beach, CA 90266

Pharmacy Technician Registration No.
TCH 32591

Respondent.

DECISION AFTER RECONSIDERATION

The Board of Pharmacy hereby adopts the attached Proposed Decision dated October 3, 2006 as its decision in the above-entitled matter with the exception of the following:

Probation condition (20) titled "Notification of Departure" shall be amended as follows:


"If Respondent leaves California 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."

This Decision shall become effective on

IT IS SO ORDERED THIS 13th day of February 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

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

In the Matter of the Petition for Reconsideration
Against:

Case No. 297 1

OAH No. L2006060342

JOE L. SOSA
P O BOX 3374
Manhattan Beach, CA 90266

Pharmacy Technician Registration No.
TCH 32591

Respondent.

**ORDER GRANTING
RECONSIDERATION
AND
STAY ORDER**

The Board of Pharmacy having read and considered respondent's Petition for Reconsideration dated December 15, 2006, and good cause appearing, NOW THEREFORE IT IS ORDERED that Reconsideration is granted.

The order granting reconsideration is based on the Respondent's request for reconsideration of whether the following conditions should be reduced or eliminated:

- Probation Length
- Paragraph 17: Attend Substance Abuse Recovery Relapse Prevention and Support Groups
- Paragraph 18: Random Drug Screening
- Paragraph 20: Notification of Departure
- Paragraph 21: Abstain from Drugs and Alcohol Use

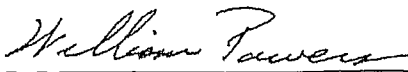
The board will decide the case itself upon all the pertinent parts, including the exhibits and written argument of the parties, without taking additional evidence. Written argument may be filed with this board on or before January 18, 2007.

A stay of execution of the Board of Pharmacy's decision effective January 4, 2007, is hereby ordered until the board renders its decision after reconsideration.

IT IS SO ORDERED this 3rd day of January, 2007.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against:

JOE L.SOSA
P. O. BOX 3374
Manhattan Beach CA 90266

Pharmacy Technician Registration No.
TCH 32591

Case No. 2971

OAH No. L2006060342

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), paragraph 11 of the ORDER, appearing on page 6 of the Proposed Decision, is hereby modified for technical reasons as follows:

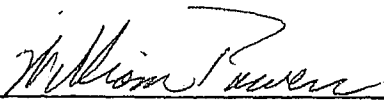
11. Should Respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, Respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

The technical modification made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on January 4, 2007.

IT IS SO ORDERED this 5th day of December, 2006.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against:

JOE L. SOSA
P.O. BOX 3374
Manhattan Beach, CA 90266

Pharmacy Technician Registration No.
TCH 32591,

Case No. 2971

OAH No. L2006060342

Respondent.

PROPOSED DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 7, 2006, in Los Angeles.

Scott J. Harris, Deputy Attorney General, represented Complainant.

Jonathan Allen Klein, Esq., represented Respondent, who was also present.

Oral and documentary evidence was received and argument made. The record was closed and the matter submitted on September 7, 2006.

FACTUAL FINDINGS

1. The Accusation was brought by Patricia F. Harris, in her then official capacity as the Executive Officer of the Board of Pharmacy (Board). Complainant is Virginia K. Herold, who is now the Interim Executive Officer of the Board.

2. On March 10, 2000, the Board issued Pharmacy Technician Registration No. TCH 32591 to Respondent, which was in full force and effect at all times relevant and will expire on January 31, 2008, unless renewed.

3. On May 4, 2005, during a routine traffic stop, Respondent, a passenger in the subject vehicle, was found to be in possession of a controlled substance, Methamphetamine, which he admitted belonged to him.

4. Respondent candidly admitted while testifying in this matter that he had also used Methamphetamine once or twice before May 4, 2005.

5. With regard to the above-described traffic stop, Respondent was arrested and prosecuted for possession of a controlled substance. Court records from the criminal case were not presented. However, Respondent testified that he pled guilty to a misdemeanor crime, entry of judgment was deferred and he was placed on probation until December 2006. As a condition of probation, Respondent successfully completed a drug counseling program in January 2006. He is so far in compliance with the other terms and conditions of probation.

6. Respondent has no other criminal record.

7. It was not established that Respondent is addicted to Methamphetamine or any other narcotic or that he now has a problem with drugs or alcohol. Respondent's arrest was the result of what he readily acknowledges was a stupid mistake, when he was experimenting. He credibly testified that he has not since used any controlled substance. Respondent's credible testimony was corroborated by many facts. For example, he has taken and passed several drug tests since his arrest. Respondent successfully completed the drug counseling program as described above. He has worked as a pharmacy technician for several years without incident. Various supervisors from his last few jobs all testified credibly that Respondent had never appeared at work to be under the influence of any drug or alcohol.

8. It was not established that Respondent is at risk for stealing substances at work like psuedoephedrine that are used in the manufacture of Methamphetamine. As found above, Respondent was not proven to be addicted to Methamphetamine. Moreover, psuedoephedrine will soon only be available to consumers over-the-counter and thus subject to strict regulation, control and inventory by a supervising pharmacist. It would take a large amount of psuedoephedrine to make Methamphetamine, the absence of which would surely be quickly noticed by such a supervising pharmacist. For many years Respondent has had unencumbered access to psuedoephedrine without incident.

9. As discussed above, several of Respondent's supervisors from his last few jobs as a pharmacy technician testified and established as follows. Respondent is a competent pharmacy technician, who is reliable and trustworthy. He gets along well with customers. He likes his job and is easy to supervise. There has never been any suspicion of his diverting drugs at work. Respondent currently works at AD-RX, a division of ModernHealth. He is a Pharmacy Technician II, a position also known as a "Lead Technician." In that capacity, Respondent is not expected to actually fill prescriptions or handle drugs, but rather he is involved in other aspects of processing orders and the company's computer programs. Respondent is doing very well in his current position and is heading towards greater supervisory responsibilities. Two different employees of ModernHealth who now supervise Respondent both credibly testified that they have absolutely no concern with Respondent continuing to work as a pharmacy technician, even in light of his arrest.

10. It was established that Respondent recognizes the seriousness of his past misconduct and is remorseful about the events leading to his arrest.

11. Complainant established that costs in the amount of \$ 5,334.75 were reasonably incurred in the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. *Cause for Discipline* (Unprofessional Conduct). Respondent's license is subject to disciplinary action for unprofessional conduct pursuant to Business and Professions Code section 4301, subdivisions (j) and (o),¹ in that Respondent was in possession of a controlled substance, Methamphetamine, in violation of state statutes regulating controlled substances and dangerous drugs, namely section 4060 and Health and Safety Code section 11377, subdivision (a). (Factual Findings 3-4.)

2A. *Disposition*. Since cause for discipline was established, the level of discipline must be determined. In reaching a decision on disciplining a license, the Board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (revised 1/2001). (Cal. Code Regs, tit. 16, § 1760.)

2B. The Board's Disciplinary Guidelines list 14 different factors to be considered in determining the level of discipline to be imposed. Those factors are applied to Respondent as follows. No actual harm was done to the public (factor 1) or to any consumer (factor 2). Respondent has no prior disciplinary record with the Board (factor 3). Respondent has received no prior warnings from the Board (factor 4). The current violation is comprised of one charge of unprofessional conduct, arising from a single incident (factor 5). Respondent's misconduct is deemed to have been serious but not severe (factor 6). The only mitigating evidence is that Respondent admitted to the police that the Methamphetamine found in the car was his (factor 7). Respondent presented sufficient evidence of rehabilitation, indicating that he has not since consumed controlled substances and is not addicted to them (factor 8). Respondent is in compliance with his criminal probation (factor 9). Respondent has just this one conviction, entry of which apparently has been deferred pending his completion of probation (factor 10). As a conviction has apparently not yet been entered, the factor regarding expungement of a conviction is not yet applicable (factor 11). Respondent's misconduct occurred 16 months ago (factor 12), and was the result of his intentional misconduct (factor 13), from which he derived no known financial benefit (factor 14).

2C. After considering the factual findings and legal conclusions above, and the application of the Board's disciplinary factors, a moderate level of discipline is warranted in this case. Respondent's use and possession of Methamphetamine is obviously a concern given his pharmacy technician license. However, Respondent established that his use of that drug was very limited and that he is not addicted to it or other controlled substances. He has established sufficient rehabilitation to indicate that he can be trusted to perform his licensed duties without being a danger to the public.

¹ All further statutory references are to the Business and Professions Code unless otherwise noted.

2D. Nonetheless, Methamphetamine is commonly known to be a very dangerous and addictive drug. The fact that Respondent has been in possession of Methamphetamine more than once is sufficiently serious to justify the Category III level discipline recommended in the Disciplinary Guidelines for this type of misconduct. Since cause for discipline of Respondent's license involves a controlled substance, the five year probationary period recommended by the Disciplinary Guidelines is warranted, along with various terms and conditions intended to allow the Board to monitor and verify Respondent's rehabilitation and abstinence from drugs. A short suspension is also warranted, so as to allow Respondent time to prepare for the requirements of his probation and to make adjustments accordingly. The minimum three month suspension recommended by the Disciplinary Guidelines for a Category III violation is not warranted in this case. As it was not established that Respondent has an addiction to drugs, no purpose for such a lengthy suspension is apparent, other than to be punitive. (Factual Findings 3-10.)

3. *Costs.* In accordance with section 125.3, it was established that the reasonable costs of investigating and prosecuting this disciplinary matter were \$ 5,334.75. (Factual Finding 11.)

ORDER

Pharmacy Technician Registration number TCH 32591, issued to Respondent Joe L. Sosa, is revoked; however, revocation is stayed and Respondent is placed on probation for FIVE years upon the following terms and conditions:

1. Certification Prior to Resuming Work

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

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

Subject to the above restrictions, Respondent may continue to own or hold an interest in any entity licensed by the Board in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order (e.g., see Condition number 16).

2. Obey All Laws

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

3. Reporting to the Board

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

4. Interview with the Board

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

5. Cooperation with Board Staff

Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of his 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 case number 2971 and the terms, conditions and restrictions imposed on Respondent by the decision.

Within 30 days of the effective date of this decision, and within 15 days of Respondent undertaking new employment, Respondent shall cause his or her employer to report to the Board in writing acknowledging the employer has read the decision in case number 2971.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the decision in case number 2971 in advance of the Respondent commencing work at each pharmacy. "Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the Respondent is considered an employee or independent contractor.

7. Reimbursement of Board Costs

Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$ 5,334.75. Respondent may make payments pursuant to a reasonable schedule of payments approved by the Board.

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

8. Probation Monitoring Costs

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

9. 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.

10. 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.

11. Tolling of Probation

It is a violation of probation for Respondent to work less as a pharmacy technician than the number of hours per month required by the Business and Professions Code. Should Respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, Respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

12. Violation of Probation

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

If a Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over Respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty which was stayed.

13. Completion of Probation

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

14. License Surrender While on Probation/Suspension

Following the effective date of this decision, should Respondent cease practice due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, Respondent may tender his or her license to the Board for surrender. The Board shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, Respondent will no longer be subject to the terms and conditions of probation.

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

15. Actual Suspension

As part of probation, Respondent is suspended from the duties of a pharmacy technician for 30 days, beginning on the effective date of this decision.

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

shall Respondent manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

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

During suspension, Respondent shall not perform any of the duties of a pharmacy technician as provided by Section 1793.2 of the California Code of Regulations.

16. No Ownership of Licensed Premises

Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within 90 days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board.

17. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within 30 days of the effective date of this decision, Respondent shall begin regular attendance at a Board-approved recognized and established substance abuse recovery support group in California, (e.g., Alcoholic Anonymous, Narcotics Anonymous, Cocaine Anonymous, etc.). Respondent must attend at least one group meeting per week. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the first three years of probation.

18. Random Drug Screening

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the Board. At all times Respondent shall fully cooperate with the Board, and shall, when directed, submit 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. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. Respondent may not resume the practice of pharmacy until notified by the Board in writing.

19. Work Site Monitor

Within 10 days of completion of the suspension imposed by this Order, Respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising Respondent during working hours. 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.

20. 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.

21. Abstain from Drugs and Alcohol Use

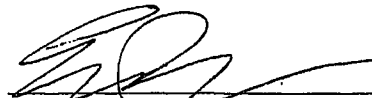
Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of the Respondent. Additionally, Respondent shall cause the prescribing practitioner to notify the Board in writing, indicating their awareness of the chemical dependency. Additionally, Respondent shall cause the prescribing physician to notify the Board in writing, indicating their awareness of the chemical dependency.

22. 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.

DATED: October 3, 2006


ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings

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7
8 **BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
9 STATE OF CALIFORNIA**

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In the Matter of the Accusation Against:
JOE L. SOSA
P.O. Box 3374
Manhattan Beach, CA 90266
Pharmacy Technician Registration
No. TCH 32591
Respondent.

Case No. 2971

A C C U S A T I O N

17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 10, 2000, the Board of Pharmacy issued Pharmacy
23 Technician Registration No. TCH 32591 to Joe L. Sosa (Respondent). The Pharmacy Technician
24 Registration was in full force and effect at all times relevant to the charges brought herein and
25 expired on January 31, 2006, and has not been renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Board of Pharmacy (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code (Code) unless otherwise indicated.

2 4. Section 492 of the Code states:

3 "Notwithstanding any other provision of law, successful
4 completion of any diversion program under the Penal Code, or
5 successful completion of an alcohol and drug problem assessment
6 program under Article 5 (commencing with Section 23249.50) of
7 Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
8 any agency established under Division 2 (commencing with
Section 500) of this code, or any initiative act referred to in that
division, from taking disciplinary action against a licensee or from
denying a license for professional misconduct, notwithstanding that
evidence of that misconduct may be recorded in a record pertaining
to an arrest."

9 5. Section 4300 of the Code permits the Board to take disciplinary action to
10 suspend or revoke a license issued by the Board.

11 6. Section 4301 of the Code states:

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

15 ...
16 "(j) The violation of any of the statutes of this state
or of the United States regulating controlled substances and
17 dangerous drugs.
...

18 "(o) Violating or attempting to violate, directly or
19 indirectly, or assisting in or abetting the violation of or conspiring
20 to violate any provision or term of this chapter or of the applicable
federal or state laws and regulations governing pharmacy,
including regulations established by the board."

21 7. Section 4060 of the Code states;

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

28 ///

1 8. Health and Safety Code section 11377, subsection (a) states in pertinent
2 part:

3 “Every person who possesses any controlled substance
4 which is (1) classified in Schedule III, IV, or V, and which is not a
5 narcotic drug, (2) specified in subdivision (d) of Section 11054,
6 except paragraphs (13), (14), (15), and (20) of subdivision (d), (3)
7 specified in paragraph (11) of subdivision (c) of Section 11056, (4)
8 specified in paragraph (2) or (3) of subdivision (f) of Section
11054, or (5) specified in subdivision (d), (e), or (f) of Section
11055, unless upon the prescription of a physician, dentist,
podiatrist, or veterinarian, licensed to practice in this state, shall be
punished by imprisonment in a county jail for a period of not more
than one year or in the state prison.”

9 9. Section 118, subdivision (b), of the Code provides that the expiration of
10 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
11 period within which the license may be reviewed, restored, reissued or reinstated.

12 10. Section 125.3 of the Code provides, in pertinent part, that the Board may
13 request the administrative law judge to direct a licentiate found to have committed a violation or
14 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
15 and enforcement of the case.

16 CONTROLLED SUBSTANCE

17 11. Methamphetamine is a Schedule II controlled substances as defined in
18 Health and Safety Code section 11055 subdivision (d)(2) and is characterized as a dangerous
19 drug pursuant to section 4022 of the Code.

20 CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct)

22 12. Respondent’s license is subject to disciplinary action for unprofessional
23 conduct under section 4301, subdivisions (j) and (o) of the Code, in that Respondent was in
24 possession of a controlled substance, Methamphetamine, in violation of section 4060 of the Code
25 and Health and Safety Code section 11377, subdivision (a). The circumstances are as follows:

26 a. On or about May 4, 2005, during a routine traffic stop, Respondent, a
27 passenger in the subject vehicle, was found to be in possession of a controlled substance,
28 Methamphetamine. The police officer conducted a search of the vehicle and found a satchel

1 containing Methamphetamine. Respondent admitted that the satchel belonged to him.

2 PRAYER

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

5 1. Revoking or suspending Pharmacy Technician Registration No. TCH
6 32591, issued to Joe L. Sosa.

7 2. Ordering Joe L. Sosa to pay the Board of Pharmacy the reasonable costs of
8 the investigation and enforcement of this case, pursuant to Business and Professions Code
9 section 125.3;

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

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12 DATED: 4/24/06

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