

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

In the Matter of the Accusation Against:

**DAVID HAYRAPETIAN**  
2031 W Krystal Ave.  
Lancaster, CA 93536

Pharmacy Technician Registration No. TCH  
60049

Respondent.

Case No. 3818

OAH No. 2011060316

**DECISION AND ORDER**

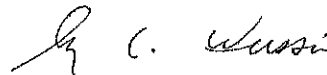
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on January 4, 2013.

It is so ORDERED on December 5, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By



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STANLEY C. WEISSER  
Board President

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**PROPOSED DECISION**

Administrative Law Judge Howard Posner, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on October 4, 2012.

Kevin Rigley, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (the Board).

Attorney Anna Movsesian represented respondent .

Oral and documentary evidence was received and the matter was submitted October 4, 2012.

The Executive Office of the Board of Pharmacy brings this Accusation to revoke Respondent's pharmacy technician registration. For the reasons set out below, respondent's registration is revoked.

**FACTUAL FINDINGS**

*Jurisdiction and Background*

1. Complainant issued this Accusation in her official capacity.
2. On December 8, 2004, the Board issued Pharmacy Technician Registration number TCH 60049 to respondent. That registration expires November 30, 2012. The Board brought this Accusation to revoke his registration on May 9, 2011, and respondent timely requested a hearing.

*Criminal Conviction*

3. On March 11, 2010, in Los Angeles Superior Court, case number 9GN00836,

a jury convicted respondent of sexual battery, in violation of Penal Code section 243.4, subdivision (e)(1). The jury acquitted respondent of another count of sexual battery involving another woman on a different date. Respondent was sentenced to 30 days in jail, with credit for 12 days of actual jail time served or "good time/work time," fined \$755, and placed on summary probation for three years. He was ordered to complete 40 hours of community service and a one-year sexual impulse class. He was required to register as a sex offender, and as a condition of probation, ordered to stay away not only from the woman who he was convicted of sexually battering, but also from the woman he was acquitted of sexually battering.

*Mitigation, Aggravation and Rehabilitation*

4. Respondent is 26 years old. He was 23 when he was arrested for the sexual battery. He completed the court-ordered sexual impulse class. Respondent remains on probation until June 2013.

5. Respondent contended at hearing that he was wrongfully convicted, and testified that he had been in Lancaster, where he lives with his parents, when the crime occurred. His father testified at hearing that he had been with respondent that day, and both respondent and his father testified that the father had tried to give respondent a ride from Lancaster to his job in the City of Commerce, but the car overheated and had to be towed from Glendale back to Lancaster, where it arrived at 11:00 a.m. The father and respondent both testified that respondent went back to Lancaster with the car, and respondent's father testified that respondent was with him the whole day, but was not specific about where respondent was when the crime was committed at 10:30 that night, nearly twelve hours after the car was towed. Respondent admitted at hearing that the same alibi evidence was presented to the jury in his criminal trial. The conviction by a jury verdict establishes that respondent committed the crime.

6. At hearing, respondent introduced evidence of an incident (not involved in his sexual battery case) involving a girl aged 15 or 16, in which he was questioned by police but not charged. Respondent testified that he merely approached the girl at a bus stop and tried to get her phone number, and denied that he harassed or pursued her.

7. Respondent has been attending Antelope Valley College, studying what he described as "deaf studies" (including sign language), with an eye toward working with the hearing-impaired. He testified that he has otherwise "stayed home," living with his parents and not employed, since his 2009 arrest. Since his conviction he has "found Jesus" and attends church.

8. Respondent has gotten engaged since his conviction. His fiancée testified at hearing that respondent is a kind, loving, generous gentleman. Her father wrote a letter describing respondent as "polite and caring." Suzanne Smith, Ph.D. of the Mental Health Community Development Institute in Glendale, where respondent participated and assisted in presenting workshops, wrote that he is a person "of strong moral character" and opined that "his conviction as a sex offender is incomprehensible." Respondent testified that he has

not participated in Mental Health Community Development Institute activities recently because he is "too broke to commute" from Lancaster to Glendale.

### *Costs*

9. The Department has submitted a summary of costs that it requests in this matter, consisting of attorney and paralegal time that the Attorney General's office has spent on this matter. It includes 14.5 hours of attorney time at \$170 per hour and 19.25 hours of paralegal time at \$120 per hour, for a total of \$4,775. This total is fairly high, and the Attorney General's generic descriptions make it impossible to understand the cause. The only evidence of respondent's ability to pay is that he has been unemployed for three years and is too broke to get from Lancaster to Glendale. Under the circumstances, the costs should be reduced to \$3,000.

### LEGAL CONCLUSIONS

1. Under Business and Professions Code section 118, subdivision (b),<sup>1</sup> the Department may proceed with disciplinary proceedings against respondent's license even if the license has expired.

2. Cause exists to revoke respondent's license under sections 490, subdivision (a) and 4301, subdivision (1), both of which allow the Board to suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the qualifications, functions, or duties of the business or profession for which license was issued. Under California Code of Regulations, title 16, section 1770, a crime is substantially related "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." There is also cause to revoke his license under Business and Professions Code section 4301, subdivision (f), which directs the Department to take action against the license of someone guilty of "unprofessional conduct," which includes "any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise . . ." Sexual battery (Factual Finding 3) is a crime involving moral turpitude (*People v. Chavez* (2000) 84 Cal.App.4<sup>th</sup> 25, 27), and is substantially related to the duties of pharmacy technician, who has access to addresses and personal information that could be used to locate potential victims. Penal Code section 290 requires a person convicted for sexual battery under Penal Code section 243.4 to register as a sex offender, an indication that the law regards the offense as a cause for serious concern.

3. Respondent bears the burden of showing rehabilitation and fitness to keep his registration. He has not met that burden. He is still on probation (Factual Finding 4), and his good behavior while on probation is entitled to little weight. "Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little

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<sup>1</sup> Further statutory references are to the Business and Professions Code.

weight is generally placed on the fact that [an applicant] did not commit additional crimes or continue addictive behavior while in prison or while on probation or parole." (*In re Gossage* (2000) 23 Cal.4th 1080, 1099.) Moreover, his presentation at hearing, consisting largely of attempts to show that he did not commit the crime of which he was convicted (Factual Finding 5), shows that he has not yet taken responsibility for his actions. He has apparently made strides in his personal life and is pursuing education (Factual Finding 8), but it is too early to conclude that the public can be protected if he is allowed to continue as a pharmacy technician.

4. Section 125.3 allows the Board to recover reasonable costs of investigating and prosecuting a disciplinary action. The Board has requested costs of \$4,775, of which \$3,000 is found to be reasonable. (Factual Finding 9.)

#### ORDER

Pharmacy technician license number TCH 60049, issued to respondent David Hayrapetian, is revoked. Respondent shall relinquish his technician license to the Board within ten days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked technician license for three years from the effective date of this decision.

A condition of reinstatement shall be that the respondent is certified as defined in Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the board.

As a condition precedent to reinstatement of his or her revoked technician license respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$3,000, which shall be paid in full before reapplication or reinstatement of his revoked technician license, unless otherwise ordered by the Board.

DATED: November 5, 2012



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HOWARD POSNER

Administrative Law Judge

Office of Administrative Hearings

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9 **BEFORE THE**  
**BOARD OF PHARMACY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Accusation Against:

Case No. 3818

12 **DAVID HAYRAPETIAN**  
13 **2031 W. Krystal Avenue**  
14 **Lancaster, CA 93536**

**A C C U S A T I O N**

15 Original Pharmacy Technician Registration  
16 Number TCH 60049

17 Respondent.

18  
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about December 8, 2004, the Board of Pharmacy (Board) issued Original  
24 Pharmacy Technician Registration Number TCH 60049 to David Hayrapetian (Respondent). The  
25 license was in full force and effect at all times relevant to the charges brought herein and will  
26 expire on November 30, 2012, unless renewed.

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1 **JURISDICTION**

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

4 **STATUTORY PROVISIONS**

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

8 5. Section 490 states:

9 “(a) In addition to any other action that a board is permitted to take against a licensee, a  
10 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
11 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
12 or profession for which the license was issued.

13 “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
14 discipline a licensee for conviction of a crime that is independent of the authority granted under  
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
16 of the business or profession for which the licensee's license was issued.

17 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
18 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
19 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
20 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
21 made suspending the imposition of sentence, irrespective of a subsequent order under the  
22 provisions of Section 1203.4 of the Penal Code.”

23 6. Section 4300 states that “[e]very license issued may be suspended or revoked.”

24 7. Section 4301 states, in pertinent part:

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

28 . . . .





1 licensee or registrant to perform the functions authorized by his license or registration in a manner  
2 consistent with the public health, safety, or welfare.”

3 **COST RECOVERY**

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

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Substantially Related Crime)**

10 10. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
11 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
12 Respondent was convicted of a crime that was substantially related to the qualifications, functions  
13 or duties of a pharmacy technician as follows:

14 a. On or about March 11, 2010, Respondent was convicted by a jury of one  
15 misdemeanor count of violating Penal Code section 243.4, subdivision (e)(1) [sexual battery], in  
16 the criminal proceeding entitled *The People of the State of California v. David Hayrapetian*  
17 (Super. Ct. Los Angeles County, 2009, No. 9GN00836). On or about June 17, 2010 Respondent  
18 was sentenced to 30 days in the Los Angeles County Jail, placed on 3 years probation, ordered to  
19 complete 40 hours of community service, required to enroll and complete a one year Sexual  
20 Impulse class, register as a sex offender, and ordered to pay fines.

21 b. The circumstances surrounding the conviction are that on or about February 17, 2009,  
22 Glendale Police Officers were dispatched to a reported sexual battery in the city of Glendale,  
23 California. The officers interviewed the female victim who identified Respondent Hayrapetian as  
24 the person who followed her on the street, grabbed her buttock and breasts, and ran away. On or  
25 about March 6, 2009, Respondent was arrested by Glendale Officers for an outstanding warrant  
26 for sexual battery. Subsequently, Respondent was convicted of violating Penal Code section  
27 243.4, subdivision (e)(1) [sexual battery].

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)**

3 11. Respondent is subject to disciplinary action under section 4301, subdivision (f), in  
4 that on or about March 11, 2010, Respondent committed an act involving moral turpitude,  
5 dishonesty, fraud, deceit, or corruption. Complainant refers to, and by reference incorporates,  
6 allegations set forth above in paragraph 10, subparagraphs (a) and (b), as though set forth fully.

7 **PRAYER**

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

- 10 1. Revoking or suspending Pharmacy Technician No. TCH 60049, issued to Respondent  
11 David Hayrapetian;
- 12 2. Ordering Respondent David Hayrapetian to pay the Board the reasonable costs of the  
13 investigation and enforcement of this case, pursuant to Business and Professions Code section  
14 125.3; and
- 15 3. Taking such other and further action as deemed necessary and proper.

16  
17  
18 DATED: 5/9/11

19   
20 **VIRGINIA HEROLD**

21 Executive Officer  
22 Board of Pharmacy  
23 Department of Consumer Affairs  
24 State of California  
25 Complainant  
26  
27  
28