

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

In the Matter of the Accusation Against:

DARON C. ASSANAH
aka Daron Christopher Assanah
3352 Silvertip Road
Chino Hills, CA 91709

Pharmacy Technician License TCH 81093

Respondent.

Case No. 3880

OAH No. 2011090579

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 2 of the Factual Findings, appearing on page 1, and paragraph 1 of the Order, appearing on page 4, of the Proposed Decision, is hereby modified for technical reasons as follows:

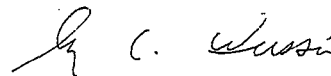
2. On March 13, 2008, the Board issued Pharmacy Technician Registration number TCH 81093 to respondent. The expiration date of that registration was December 31, 2011. There was no evidence that the registration was renewed. The Board brought this Accusation to revoke his registration on June 7, 2011, and Respondent timely requested a hearing.

Pharmacy technician license number TCH 81093, issued to respondent Daron C. Assanah, is revoked. Respondent shall relinquish his technician license to the Board within ten days of the effective date of this decision. Respondent may not apply reapply or petition the Board for reinstatement of his revoked technician license for three years from the effective date of this decision.

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on June 4, 2012.

IT IS SO ORDERED this 4th day of May, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Respondent

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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 February 9, 2012.

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

Respondent Daron Assanah represented himself.

Oral and documentary evidence was received and the matter was submitted February 9, 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 March 13, 2008, the Board issued Pharmacy Technician Registration number TCH 81903 to respondent. The expiration date of that registration was December 31, 2011. There was no evidence that the registration was renewed. The Board brought this Accusation to revoke his registration on June 7, 2011, and Respondent timely requested a hearing.

Criminal Conviction

3. On August 5, 2010, in Los Angeles Superior Court, case number KA091101, respondent was convicted on his no contest plea of robbery by means of force or fear, in violation of Penal Code section 211. The court found there was a factual basis for the plea. According to respondent's testimony at hearing and hearsay accounts in the police report, respondent, his brother and a friend encountered a man sleeping in a car in parking lot on June 27, 2010, shortly after midnight. They pulled the man out of the car, took his cell phone and wallet by force, and drove away.¹ (Respondent testified at hearing that he "tried to end the situation" by telling the victim to "walk away," rather than by dissuading the two other perpetrators from robbing him.) When the police stopped the perpetrators' car and arrested them a short time later, the arresting officer saw that they had removed the victim's debit card and a credit card from the wallet, according to the arresting officer's report.

4. Respondent was sentenced to nine months in county jail, which he served in full, and then, on June 6, 2011, was sentenced to five years supervised probation. His probation will end in June 2016.

Mitigation, Aggravation and Rehabilitation

5. Respondent is 25 years old. He was 23 at the time of the robbery. Respondent testified at hearing that he and his companions had attended a party, gotten drunk and driven away. They encountered the victim because he had parked his car in front of the donut shop where they stopped to use the restroom. Respondent described his behavior as "irrational" because of alcohol. Both of respondent's parents testified at hearing that alcohol was the cause of his criminal behavior.

6. Respondent admitted that he had been convicted of drunk driving before the night of the robbery. There was no other evidence about that conviction.²

7. Respondent introduced a letter from his probation officer expressing a "professional opinion" that respondent is "ethically moral and a good person and I am satisfied with how his progress is maturing [sic]."

¹ Paragraph 11 of Accusation alleges that one of the perpetrators "pointed a handgun" at the victim, but neither the conviction nor the evidence support this allegation. It is based solely on two hearsay statements in the police report, neither of which states that there was a gun: the victim said he believed the perpetrators had a knife or gun, but did not see either (they warned him not to look at them), and a witness (who followed the perpetrators in his car when they drove away from the crime scene and reported their car's license number, location and heading to the police) said he saw a metallic object that might have been a gun. Respondent testified that there was no gun, and the police report states that none was found.

² The Accusation alleges the conviction in aggravation, but the Board introduced no evidence about it other than respondent's testimony. In particular, there was no evidence of the "4301 letter" alleged on page 5 of the Accusation.

8. Respondent testified at hearing that he is attending Citrus College, a community college in Glendora, as a full-time student working toward a degree in biochemistry and an eventual career in pharmacology. There was no evidence of what academic progress he has made.

Costs

9. The Board has submitted a summary of attorney and paralegal time that the Attorney General's office has spent on this matter. It includes a pre-hearing total of 10.75 hours at \$170 per hour and 2.75 hours of paralegal time at \$120. It also includes an estimated one hour of time after February 6, for a total of \$2,327.50. Three hours of attorney time and 1.25 hours of paralegal time are described only as "case management," which makes it impossible to reach an informed conclusion that they were reasonably incurred. An hour of attorney time and an hour of paralegal time, totaling \$290, are therefore disallowed, leaving \$2,037.50 as reasonable costs.

LEGAL CONCLUSIONS

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

2. Cause exists to revoke respondent's license under Business and Professions Code sections 490, subdivision (a), and 4301, subdivision (l), as alleged in paragraph 10 of the Accusation. Both statutes allow the Board to suspend or revoke a license if the licensee has been convicted of a crime that is substantially related to the licensee's qualifications, functions, or duties. 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." The crime of which respondent was convicted was a serious felony involving, by its nature, violence or threat of violence (Factual Finding 3), and is inconsistent with public safety.³ That respondent attributes his behavior to excessive alcohol consumption (Factual Finding 5) is hardly a mitigating factor, particularly in light of his admission that he had been convicted earlier for drunk driving (Factual Finding 6). To the contrary, violence caused by excessive drinking is substantially related to a license that involves access to drugs.

3. Respondent bears the burden of showing rehabilitation and fitness to keep his registration. He has not met that burden. He is still in the first of five years of supervised probation, and his probation officer's expression of confidence (Factual Finding 7) is entitled to little weight because it is, for present purposes, premature. "Since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion, little

³ Penal Code section 211 provides, "Robbery is the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear."

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.) There is insufficient evidence to conclude that the public interest will be protected if he is allowed to maintain his registration.

4. The Board requests investigation and enforcement costs of \$2,037.50 under Business and Professions Code section 125.3.⁴ While \$1,960 of this amount is reasonable on its face (Factual Finding 9), the Board “must determine that the [respondent] will be financially able to make later payments.” (*Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) The only evidence bearing on the subject of ability to pay is that respondent is a full-time student with a felony conviction, which does not augur well for his earning power. There is no evidence that he is earning any money. Under these circumstances, costs of \$1,000 are appropriate.


ORDER

Pharmacy technician license number TCH 81903, issued to respondent Daron C. Assanah, 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 revoked technician license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$1,000, which shall be paid in full before reapplication or reinstatement of his revoked technician license, unless otherwise ordered by the Board.

DATED: March 21, 2012



HOWARD POSNER
Administrative Law Judge
Office of Administrative Hearings

⁴ Under section 125.3 subdivision (a), “in any...disciplinary proceeding before any board within the [Department of Consumer Affairs], upon request of the entity bringing the proceeding, the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.”

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

10 In the Matter of the Accusation Against:

Case No. 3880

11 **DARON C. ASSANAH, AKA DARON**
12 **CHRISTOPHER ASSANAH**
13 **3352 Silvertip Road**
Chino Hills, CA 91709
14 **Pharmacy Technician Reg. No. TCH 81093**

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 13, 2008, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 81093 to Daron C. Assanah, aka Daron Christopher Assanah
23 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
24 relevant to the charges brought herein and will expire on December 31, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

1 4. Section 4300 of the Code states:

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

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

6 "(1) Suspending judgment.

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

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

9 "(4) Revoking his or her license.

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

12

13 5. Section 4301 of the Code states:

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

17 ...

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

21 ...

22 "(l) The conviction of a crime substantially related to the qualifications, functions, and
23 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
24 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
25 substances or of a violation of the statutes of this state regulating controlled substances or
26 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
27 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
28 The board may inquire into the circumstances surrounding the commission of the crime, in order

1 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
2 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
3 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
4 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
5 of this provision. The board may take action when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal or when an order granting probation is made
7 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
8 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
9 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
10 indictment.

11 6. California Code of Regulations, title 16, section 1770, states:

12 "For the purpose of denial, suspension, or revocation of a personal or facility license
13 pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
14 crime or act shall be considered substantially related to the qualifications, functions or duties of a
15 licensee or registrant if to a substantial degree it evidences present or potential unfitness of a
16 licensee or registrant to perform the functions authorized by his license or registration in a manner
17 consistent with the public health, safety, or welfare."

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

22 8. Section 118, subdivision (b), of the Code provides that the
23 suspension/expiration/surrender/cancellation of a license shall not deprive the
24 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
25 within which the license may be renewed, restored, reissued or reinstated.

26 9. Section 490 of the Code states:

27 "(a) In addition to any other action that a board is permitted to take against a licensee, a
28 board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

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

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

13
14 **CAUSE FOR DISCIPLINE**

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

16 10. Respondent is subject to disciplinary action under section 4301, subdivisions (I) and
17 section 490, in conjunction with California Code of regulations, Title 16, section 1770, in that
18 Respondent was convicted of a crime substantially related to the qualifications, functions or
19 duties of a pharmacy technician. The circumstances are as follows:

20 11. On or about August 5, 2010, in the case entitled *People of the State of California v.*
21 *Daron Christopher Assanah*, case no. KA091101, Los Angeles Superior Court, Respondent pled
22 no contest to one count of Robbery, a violation of Penal Code section 211. The circumstances
23 underlying the crime are that on or about June 27, 2010, Victim Lee was sleeping in his car in a
24 parking lot. Respondent and two other suspects forcibly pulled the victim out of his vehicle,
25 pointed a handgun and demanded his personal belongings, which included a cell phone, wallet,
26 credit cards and car keys. The victim complied and the three defendants drove away. A person
27 standing in the parking lot where the robbery took place witnessed the crime and was able to
28 write down the license plate number of the vehicle. Los Angeles County Sherriff's Deputies

1 subsequently conducted a traffic stop of the vehicle and recovered the items forcibly taken from
2 the victim. Respondent was arrested along with the other two suspects.

3 DISCIPLINARY CONSIDERATIONS

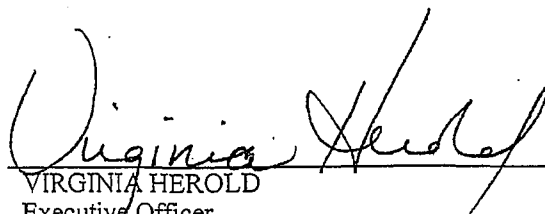
4 Respondent was subjected to prior discipline by the Board of Pharmacy when he was
5 convicted on March 10, 2010 of Vehicle Code section 23152 (b) [Driving Under the Influence of
6 Alcohol] in Orange County, California, case number 10NM02001. Based on this conviction, the
7 Board issued a 4301 letter on April 30, 2010.

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 81093,
12 issued to Daron C. Assanah, aka Daron Christopher Assanah
13 2. Ordering Daron C. Assanah to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;
16 3. Taking such other and further action as deemed necessary and proper.

17
18
19 DATED: 6/7/11


VIRGINIA HEROLD

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

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