

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

In the Matter of the Statement of Issues
Against:

CHRISTOPHER ROBIN CLAUSI

Respondent.

No. 4047

OAH No. 2011110657

DECISION AFTER NONADOPTION

On May 29, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Lauro A. Paredes, Deputy Attorney General, represented the complainant.

Respondent represented himself.

The matter was submitted on May 29, 2012.

The proposed decision of the Administrative Law Judge was submitted to the Board on June 19, 2012. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on July 23, 2012 issued an Order of Non-adoption and subsequently on August 20, 2012, issued an Order Fixing Date for Submission of Argument. Written argument having been received from complainant and the time for filing written argument in this matter having expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On September 23, 2011, Virginia Herold, Executive Officer, Board of

Pharmacy, Department of Consumer Affairs, State of California (hereafter, "Board") filed Statement of Issues No. 4047 in her official capacity. Respondent filed a timely Request for Hearing.

2. On June 8, 2010, respondent signed an Application for Registration as a Pharmacy Technician and submitted it to the Board.

3. March 26, 2008, in the Orange County Superior Court, respondent pleaded guilty to violating Business and Professions Code section 4140, possession of a hypodermic needle, but entry of judgment was deferred and respondent was required to enroll in a Drug Program pursuant to Penal Code section 1000. The court dismissed a charge under Health and Safety Code section 11357, subdivision (b), possession of marijuana less than one ounce.

Respondent completed a portion of the Penal Code section 1000 Drug Diversion Program in July 2008. The status information exit report indicated that respondent had been drug tested four times with negative results, he had completed an intake interview, paid the fee, and completed the treatment plan, 10 education hours, 20 group consulting hours, and the exit interview. However, on March 19, 2009 due to a later arrest for suspicion of driving under the influence, the court ordered the Penal Code section 1000 proceedings terminated, suspended imposition of sentence, and placed respondent on probation for three years on condition, among others, he complete 15 days of work for CalTrans in lieu of 15 days in jail, and pay fines and fees in the amount of \$120.00.

4. The facts and circumstances of the offense are as follows: On January 25, 2008, a police officer with the Orange Police Department contacted respondent who was parked in his vehicle with another person at about 1:49 a.m. With respondent's consent, the officer searched the vehicle and found a hypodermic needle. Respondent said he had used it about five days earlier to shoot up some heroin.

5. The offense for which respondent was convicted is substantially related to the qualifications, duties, and functions of a pharmacy technician.

6. Less than six months after being placed into a court-mandated diversion program under a sentence for a prior criminal conviction, Respondent was arrested and charged with suspicion of driving under the influence. As a result of a plea bargain, on March 19, 2009, respondent pleaded guilty and was convicted of violating Vehicle Code section 23013, subdivision (a), reckless driving. Respondent was ordered to pay a fine of \$250.00, take a 12-hour Alcohol and Drug Program pursuant to SB 1176, and take a MADD course.

Respondent committed the offense during the early morning hours of October 23, 2008. A California Highway Patrol officer was travelling on Interstate 5 and observed a vehicle driven by respondent slowly veering between lanes and then traveling in a "serpentine manner" at approximately 70 miles per hour (mph) down the

highway. (State's Exs. 6 and 7.) He initiated a traffic stop and instructed respondent to exit the freeway, but respondent did not and instead pulled onto the shoulder of the freeway and slowed down to 55 mph, but then accelerated his vehicle up to 70 mph until he exited the freeway at the next exit and stopped in a gas station parking lot. When the officer approached the vehicle and had respondent roll down his window, the officer detected a strong odor of marijuana emanating from the vehicle. Respondent retrieved his driver's license from his wallet, and the officer noted that respondent's movements were slow and deliberate. Respondent denied that there was an odor of marijuana in the car, but as he spoke, the officer smelled the odor of an alcoholic beverage from his breath. Respondent said he had had one drink but his speech was slow, thick, and slurred.

The officer administered a series of field sobriety tests and based on respondent's performance test failures, concluded that respondent had been driving under the influence of an alcoholic beverage and marijuana. The officer administered a preliminary alcohol screening which yielded results of 0.074 percent and 0.078 percent, just under the presumed intoxication limit of .08%. (State's Ex. 7.) The officer arrested respondent for driving under the influence and transported him to jail. When Respondent was arrested, marijuana was found in his vehicle. At hearing, respondent denied that the marijuana belonged to him. (RT 45:9-18.)

7. Respondent is 30 years old. He graduated from high school in 1999 and attended Cypress College for three years, but did not obtain a degree. He worked for several years for a temp agency while he attended school, held several part-time jobs, and since 2007, has been employed continuously for Papa John's Pizza Store as a delivery driver. He attended the pharmacy technician program at American Career College in 2010. He has worked in a warehouse in the past and obtained a forklift operator certificate. He is engaged to be married.

Respondent testified at the hearing and admitted that he made mistakes and exercised poor judgment during 2008. He apologized for what he had done and testified he has learned his lesson. He testified he had been using heroin about twice a month for about three months in 2008, used marijuana, and had been drinking, and those actions led to his two convictions. Respondent testified he has not used drugs since 2009, denied that he had ever stolen drugs or sold drugs, and denied that he was addicted to heroin. He testified he simply stopped using it. He admitted using marijuana for about two years before his arrest but has not used it since, and he has not been arrested for any offense since 2009. However, respondent failed to provide his exact sobriety date from heroin or marijuana and could only claim a "two week" sobriety date after admitting to having had a beer two weeks before the hearing. (RT 31-32; 39.) He attended AA and NA meetings as required by the court, and continues to go to such meetings on a sporadic basis. However, he admitted that at the time of the hearing that he was not "working" the [steps of the] AA program "currently." (RT 39:15-21.)

Regarding his reckless driving conviction, respondent testified he paid the fines,

completed the 12 hours of classes, and took the MADD class. He testified it was his understanding that his blood alcohol level was lower than reported by the arresting officer, although there was no evidence in the record to support that claim. He testified he had had only "a couple of drinks" with some friends, but had not been using marijuana the night of his arrest. However, it is also noted that respondent claims he had begun drinking at around 9:00 PM and was driving at "almost 1:00" AM when he was pulled over and tested very close to the presumed intoxicated, blood alcohol level of .08%. (RT 44:17-23.) He testified he no longer associates with his old friends and none of his friends use drugs.

Respondent volunteers with the Aids Healthcare Foundation by helping to clean up and giving people rides. He also has been serving as a volunteer with his church in cleanup and scout projects.

8. Respondent submitted several letters in support of his application. His mother wrote that respondent has had no criminal record since 2009 and he has complied with the programs required of him by the court. She noted that respondent has worked as a delivery driver and has maintained an excellent driving record. She wrote that respondent has lived with her for the last three years and she has never seen him in possession of any alcohol, drug, or controlled substance. She wrote that respondent has not associated with his old friends and that he has changed.

Respondent's manager at Papa John's Pizza wrote that respondent has been a good, hard-working employee, he is helpful to new employees, he attends to details, and keeps the store clean and organized. He described him as an excellent employee. Yesenia Leyva wrote that she has known respondent for more than four years through his volunteer work with the Aids Healthcare Foundation. She indicated respondent is a smart, caring, responsible person with good time management skills. She thought respondent would be an asset to any employer. Ana Lopez wrote that she has known respondent for more than three years and he has been involved in his local community and his church. She described him as highly intelligent and a hard worker.

LEGAL CONCLUSIONS

The Burden of Proof

1. The Administrative Procedure Act (Gov. Code, §§ 11500 et seq.) provides that the burden of proof is upon the applicant seeking licensure. (*Coffin v. Department of Alcoholic Beverage Control* (2006) 139 Cal.App.4th 471, 476-477.) Specifically, Government Code section 11504 states:

"A hearing to determine whether a right, authority, license, or privilege should be granted, issued, or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement

specifying the statutes and rules with which *the respondent must show compliance by producing proof at the hearing* and, in addition, any particular matters that have come to the attention of the initiating party and that would authorize a denial of the agency action sought.”
(Emphasis added.)

2. “Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.” (Evid. Code, § 115.)

Grounds for Denial

3. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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

[7]. . .

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B)The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

4. Business and Professions Code section 4300 provides in part:

“(c) The board may refuse a license to any applicant guilty of unprofessional conduct...”

5. Business and Professions Code section 4301 provides in part:

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

[¶]. . .

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

[¶]. . .

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. . .”

6. Respondent’s arrest and conviction records reveal, and Respondent admits (Finding 7), that he self-administered heroin on the night of his arrest and possessed a hypodermic needle, in violation of Business and Professions Code section 4140. Such conduct, at the very least, demonstrates a lack of good judgment and an inability to follow the rules. Good judgment and an ability to follow the rules are all traits necessary for performance of the duties of this license with safety to the public. Cause to deny respondent’s application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (l), and 480, subdivision (a), was therefore established by Findings 3, 4, and 5 in that respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a pharmacy technician.

7. Respondent’s arrest record reveals and Respondent admits (Finding 7) that he consumed alcoholic beverages before being arrested and charged with “reckless” driving. The commonly understood meaning of the word “reckless” is “utterly unconcerned about the consequences of some action; without caution; careless.”¹ Such conduct therefore evinces carelessness and a potential for acting without caution. Pharmacy technicians are expected to exercise caution and care while working in a pharmacy for the protection of the public. Therefore, cause to deny respondent’s application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (l), and 480, subdivision (a)(1) and (a)(3)(A) was established by Findings 6 and 7 in that respondent was convicted of reckless driving, a crime which is substantially related to the qualifications, functions, and duties of a pharmacy technician.

¹ (William Collins Sons & Co. Ltd, Collins English Dictionary - Complete & Unabridged (10th Edition 2009.).

Substantial legal authority provides that conduct occurring outside the practice of a profession may form the basis for imposing discipline on a license because such conduct reflects on a licensee's fitness and qualifications to practice that profession. (*Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 771) [repeated convictions involving alcohol use outside a physician's medical practice reflects poorly on the licensee's common sense and professional judgment, which are essential to the practice of medicine]; (*Watson v. Superior Court* (2009) 176 Cal.App.4th 1407, 1411–1414, 1417–1418) [medical board's statute defining "unprofessional conduct" to include self-administration of drugs or alcohol in a manner that is dangerous to self or others was not unconstitutional when applied to after-hours conduct of a physician]; *Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195, 1207 [a single conviction for driving under the influence outside of work (an act that is necessarily dangerous to self or others) could support a disciplinary proceeding against a registered nurse].

Based upon the foregoing considerations, respondent's conviction of reckless driving is a sufficient basis upon which to deny an application for a pharmacy technician registration.

8. The California legislature has defined the consumption or self-administration of alcoholic beverages in a manner injurious to oneself or the public as presumptively unprofessional conduct under Business and Professions Code section 4301(h). The California Court of Appeal has found that even a single instance of driving under the influence can form the basis for a disciplinary action for such unprofessional conduct, as follows:

"Because even a single instance of using alcohol in a manner that is dangerous to oneself or others constitutes unprofessional conduct by a physician, a single conviction for driving under the influence (an act that is necessarily dangerous to self or others) could support a disciplinary proceeding against a physician."
Sulla v. Board of Registered Nursing (2012) 205 Cal.App.4th 1195

The Board can discern no logical reason for differentiating between the treatment of an applicant's after-hours misconduct and a licensee's after-hours misconduct when considering whether an individual is fit to perform the duties or functions authorized by the license. The Board is therefore guided by the Court of Appeal's findings with respect to how such conduct of self-administering alcohol before driving can endanger the public.

In admitting repeated self-administration of alcoholic beverages before driving a motor vehicle (Findings 6 and 7), Respondent clearly engaged in the type of "unprofessional conduct" prohibited to holders of the pharmacy technician license. His conduct was harmful to himself, and potentially harmful to the public, through the potential for a traffic accident. Drinking before performing tasks, such as driving, that require the use of good judgment, caution and sobriety necessarily places the public at

risk. Such risk was evidenced by the reckless driving conviction. Cause to deny respondent's application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (h), unprofessional conduct for using alcoholic beverages to an extent or in a manner that was dangerous or injurious to self or to the public in connection with his arrest on October 23, 2008 for reckless driving, was therefore established.

9. Title 16, California Code of Regulations, section 1769 provides in part:

"(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant."

The evidence in light of these criteria shows that respondent was convicted of possession of a hypodermic needle and reckless driving offenses three years ago. The later offense involved the self-administration of alcohol in a manner dangerous to respondent and the public. He committed these offenses four years ago and was given the opportunity to avoid a conviction for the first offense under Penal Code section 1000, but he was arrested again less than six months later for suspicion of driving under the influence. He was returned to court, where he entered a guilty plea and was placed on probation for three years. He has completed probation and satisfied all the requirements imposed upon him by the court for both convictions. Respondent has not committed any offense since then.

Nevertheless, although there was no evidence presented of re-occurrence, the nature of Respondent's past misconduct is serious. Although pharmacy technicians are not independent practitioners and work under the close supervision of registered pharmacists, technicians have access to dangerous drugs and controlled substances as a consequence of their employment. As a result, pharmacy technicians hold positions of trust and are expected to strictly adhere to rules and not work while

impaired. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public. Respondent's convictions and self-administration of alcohol in a dangerous manner, at the very least, demonstrate an inability to follow the rules, a lack of good judgment, and a lack of due care or caution. (Factual Findings 3-7; Legal Conclusions 6-8.)

Respondent's evidence of rehabilitation consists primarily of a consistent and current employment record. Upon graduating from high school in 1999, he has worked regularly in temporary jobs while going to community college and then in a series of minimum wage jobs. His current employer, where he has worked for five years, is satisfied with his work. Respondent hoped to be able to better himself and that is why he took the pharmacy technician course. In addition, respondent has actively volunteered with charitable organizations in his community.

Respondent admitted to using heroin and marijuana sporadically in the past, but testified he stopped using both drugs three years ago. However, it is undisputed that Respondent has a history of drug use and court-mandated treatment for substance abuse. The fact that Respondent could not recall a precise sobriety date, and that he attends AA and NA meetings on a haphazard basis is of concern to the Board. Further, respondent's testimony was unpersuasive. Respondent's testimony that he drank much earlier before driving a vehicle and that his blood alcohol level (BAL) was actually much lower than originally tested on the day of his arrest did not appear credible in light of his reckless driving conviction. (Factual Finding 7.) His statements about his BAL are also not supported by the evidence in the record. (Findings 6 and 7.) His testimony at hearing made it appear as though Respondent downplayed his drug use and lacked accountability and responsibility for his conduct.

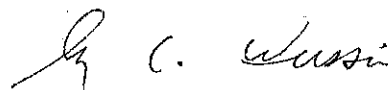
Although the Board applauds Respondent for the efforts he has undertaken to date to change his life, lack of accountability and lack of consistent efforts to maintain sobriety places the public at risk. Under these circumstances, it would not be appropriate to grant a license in this case.

ORDER

The application for a pharmacy technician's license filed by Christopher Robin Clausi is hereby DENIED.

This Decision shall become effective on December 17, 2012.

IT IS SO ORDERED this 16th day of November, 2012.



STAN C. WEISSER
Board President

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

In the Matter of the Statement of Issues Against:

CHRISTOPHER ROBIN CLAUSI

Respondent.

Case No. 4047

OAH No. 2011110657

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

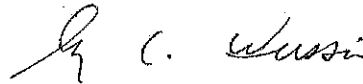
ORDER OF NONADOPTION OF PROPOSED DECISION

YOU ARE HEREBY NOTIFIED pursuant to Section 11517 of the Government Code, the California State Board of Pharmacy hereby non-adopts the proposed decision in Statement of Issues Case No. 4047. A copy of the proposed decision is attached hereto.

The board will decide the case itself upon the record, including the transcript, exhibits and written argument of the parties, without taking additional evidence. The Board has ordered a transcript and will notify the parties when the transcript has been prepared and of the date set for submission of written argument.

IT IS SO ORDERED this 23rd day of July 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY WEISSER
Board President

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

In the Matter of the Statement of Issues
Against:

CHRISTOPHER ROBIN CLAUSI

Respondent.

No. 4047

OAH No. 2011110657

PROPOSED DECISION

On May 29, 2012, in San Diego, California, Alan S. Meth, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Lauro A. Paredes, Deputy Attorney General, represented the complainant.

Respondent represented himself.

The matter was submitted on May 29, 2012.

FACTUAL FINDINGS

1. On September 23, 2011, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California (hereafter, "Board") filed Statement of Issues No. 4047 in her official capacity. Respondent filed a timely Request for Hearing.

2. On June 8, 2010, respondent signed an Application for Registration as a Pharmacy Technician and submitted it to the Board.

3. March 26, 2008, in the Orange County Superior Court, respondent pleaded guilty to violating Business and Professions Code section 4140, possession of a hypodermic needle, but entry of judgment was deferred and respondent was required to enroll in a Drug Program pursuant to Penal Code section 1000. The court dismissed a charge under Health and Safety Code section 11357, subdivision (b), possession of marijuana less than one ounce.

Respondent completed a portion of the Penal Code section 1000 Drug Diversion Program in July 2008. The status information exit report indicated that respondent had been drug tested four times with negative results, he had completed an intake interview, paid the fee, and completed the treatment plan, 10 education hours, 20 group consulting hours, and the exit interview. However, on March 19, 2009, the court ordered the Penal Code section 1000 proceedings terminated, suspended imposition of sentence, and placed respondent on probation for three years on condition, among others, he complete 15 days of work for CalTrans in lieu of 15 days in jail, and pay fines and fees in the amount of \$120.00.

4. The facts and circumstances of the offense are as follows: On January 25, 2008, a police officer with the Orange Police Department contacted respondent who was parked in his vehicle with another person at about 1:49 a.m. With respondent's consent, the officer searched the vehicle and found a hypodermic needle. Respondent said he had used it about five days earlier to shoot up some heroin.

5. The offense for which respondent was convicted is substantially related to the qualifications, duties, and functions of a pharmacy technician.

6. On March 19, 2009, respondent pleaded guilty and was convicted of violating Vehicle Code section 23013, subdivision (a), reckless driving. Respondent was ordered to pay a fine of \$250.00, take a 12 hour Alcohol and Drug Program pursuant to SB 1176, and take a MADD course.

Respondent committed the offense during the early morning hours of October 23, 2008. A California Highway Patrol officer was travelling on Interstate 5 and observed a vehicle driven by respondent slightly weaving between lanes. He initiated a traffic stop and instructed respondent to exit the freeway, but respondent did not and instead pulled onto the shoulder of the freeway and slowed down, but then accelerated his vehicle up to 70 mph until he exited the freeway at the next exit and stopped in a gas station parking lot. When the officer approached the vehicle and had respondent roll down his window, the officer detected a strong odor of marijuana emanating from the vehicle. Respondent retrieved his driver's license from his wallet, and the officer noted that respondent's movements were slow and deliberate. Respondent denied that there was an odor of marijuana in the car, but as he spoke, the officer smelled the odor of an alcoholic beverage from his breath. Respondent said he had had one drink but his speech was slow, thick, and slurred.

The officer administered a series of field sobriety tests and based on respondent's performance, concluded that respondent had been driving under the influence of an alcoholic beverage and marijuana. The officer administered a preliminary alcohol screening which yielded results of 0.074 percent and 0.078 percent. The officer arrested respondent for driving under the influence and transported him to jail.

This offense is not substantially related to the qualifications, function, and duties of a pharmacy technician.

7. Respondent is 30 years old. He graduated from high school in 1999 and attended Cypress College for three years, but did not obtain a degree. He worked for several years for a temp agency while he attended school, held several part-time jobs, and since 2007, has been employed continuously for Papa John's Pizza Store as a delivery driver. He attended the pharmacy technician program at American Career College in 2010. He has worked in a warehouse in the past and obtained a forklift operator certificate. He is engaged to be married.

Respondent testified at the hearing and admitted that he made mistakes and exercised poor judgment during 2008. He apologized for what he had done and testified he has learned his lesson. He testified he had been using heroin about twice a month for about three months in 2008, used marijuana, and had been drinking, and those actions led to his two convictions. Respondent testified he has not used drugs since 2009, denied that he had ever stolen drugs or sold drugs, and denied that he was addicted to heroin. He testified he simply stopped using it. He admitted using marijuana for about two years before his arrest but has not used it since, and he has not been arrested for any offense since 2009. He admitted to having had a beer two weeks before the hearing. He has attended AA and NA meetings as required by the court, and continues to go to such meetings on a sporadic basis.

Regarding his reckless driving conviction, respondent testified he paid the fines, completed the 12 hours of classes, and took the MADD class. He testified it was his understanding that his blood alcohol level was lower than reported by the arresting officer. He testified he had had some drinks with some friends, but had not been using marijuana. He testified he no longer associates with his old friends and none of his friends use drugs.

Respondent volunteers with the Aids Healthcare Foundation by helping to clean up and giving people rides. He also has been serving as a volunteer with his church in cleanup and scout projects.

8. Respondent submitted several letters in support of his application. His mother wrote that respondent has had no criminal record since 2009 and he has complied with the programs required of him by the court. She noted that respondent has worked as a delivery driver and has maintained an excellent driving record. She wrote that respondent has lived with her for the last three years and she has never seen him in possession of any alcohol, drug, or controlled substance. She confirmed that respondent has not associated with his old friends and that he has changed.

Respondent's manager at Papa John's Pizza wrote that respondent has been a good, hard-working employee, he is helpful to new employees, he attends to details, and keeps the store clean and organized. He described him as an excellent employee. Yesenia Leyva wrote that she has known respondent for more than four years through his volunteer work with the Aids Healthcare Foundation. She indicated respondent is a smart, caring, responsible person with good time management skills. She thought respondent would be an asset to any employer. Ana Lopez wrote that she has known respondent for more than three years and he has been involved in his local community and his church. She described him as highly intelligent and a hard worker.

LEGAL CONCLUSIONS

1. Business and Professions Code section 480 provides in part:

“(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

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

[¶] . . .

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B)The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.”

2. Business and Professions Code section 4300 provides in part:

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

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of type or circumstances of practice.

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

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

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

3. Business and Professions Code section 4301 provides in part:

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

[¶] . . .

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

[¶] . . .

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. . . The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. . .”

4. Cause to deny respondent’s application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (l), and 480, subdivision (a), was established by Findings 3, 4, and 5 in that respondent was convicted of a crime that is substantially related to the qualifications, function, and duties of a pharmacy technician.

5. Cause to deny respondent’s application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (l), and 480, subdivision (a) was not established by Finding 6 in that respondent was convicted only of reckless driving, a crime which is not substantially related to the qualifications, function, and duties of a pharmacy technician.

No appellate case has been found for which license discipline has been imposed for the conviction of a single driving under the influence offense, much less a single conviction for reckless driving. Under section 4301, subdivision (k), discipline may be imposed by the Board if there is more than one conviction of an offense involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage.

In *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, the Medical Board sought to impose discipline against Dr. Griffith's license for three misdemeanor convictions involving the use and consumption of alcoholic beverages, the last two of which occurred while Dr. Griffiths was on probation for earlier offenses. The disciplinary action was taken under Business and Professions Code section 2239, subdivision (a), which provided that "more than one misdemeanor ... involving the use, consumption, or self-administration of [alcoholic beverages] ... constitutes unprofessional conduct."

Griffiths held that by defining more than one misdemeanor conviction involving alcohol consumption as "unprofessional conduct," Business and Professions Code section 2239, subdivision (a) established a legislative nexus between that conduct and a physician's fitness and competence to practice. There was a rational basis for the statute. (*Ibid.* at 776.) Imposing discipline upon a medical licensee based on this legislative presumption furthered a particular social purpose: the protection of the public. The Legislature determined that multiple convictions involving alcohol consumption constitute a sufficient warning of possible or likely harm to the public which justifies the imposition of discipline on a medical license without waiting for a member of the public to be harmed. (*Ibid.* at p. 779.)

Based upon the foregoing considerations, respondent's one conviction of reckless driving is an insufficient basis upon which to impose discipline or deny an application for a pharmacy technician registration.

6. Cause to deny respondent's application for a pharmacy technician registration pursuant to Business and Professions Code sections 4300, subdivision (c), 4301, subdivision (h), unprofessional conduct in connection with his arrest on October 23, 2008, was not established.

Vehicle Code section 23103.5 provides in part:

"(a) If the prosecution agrees to a plea of guilty or nolo contendere to a charge of a violation of Section 23103 in satisfaction of, or as a substitute for, an original charge of a violation of Section 23152, the prosecution shall state for the record a factual basis for the satisfaction or substitution, including whether or not there had been consumption of an alcoholic beverage or ingestion or administration of a drug, or both, by the defendant in connection with the offense. The statement shall set forth the facts that show whether or not there was a consumption of an alcoholic beverage or the ingestion or administration of a drug by the defendant in connection with the offense.

(b) The court shall advise the defendant, prior to the acceptance of the plea offered pursuant to a factual statement pursuant to subdivision (a), of the consequences of a conviction of a violation of Section 23103 as set forth in subdivision (c).

(c) If the court accepts the defendant's plea of guilty or nolo contendere to a charge of a violation of Section 23103 and the prosecutor's statement under subdivision (a) states that there was consumption of an alcoholic beverage or the ingestion or administration of a drug by the defendant in connection with the offense, the resulting conviction shall be a prior offense for the purposes of Section 23540, 23546, 23550, 23560, 23566, or 23622, as specified in those sections."

In *People v. Claire* (1991) 229 Cal.App.3d 647, 651, the court explained:

"In accord with this general plan, section 23103.5 makes it more difficult to avoid a drunk driving charge by pleading to reckless driving; for purposes of the punishment for recidivists, a wet reckless conviction under section 23103.5 is equivalent to a conviction for drunk driving under section 23152."

While respondent was arrested for driving under the influence of alcohol or drugs, he was not convicted of this offense. He pled guilty to reckless driving. There is nothing in the record to suggest the plea to reckless driving was part of a plea bargain which provided for the dismissal of the more serious charge. He was not charged with nor did he plead to a violation of section 23103.5. Thus, it is entirely reasonable to conclude that the prosecutor dismissed the DUI charge and did not negotiate a plea to a wet reckless offense because there was insufficient evidence to support the more serious charge, and respondent's driving as shown in the police report constituted nothing more than reckless driving. Respondent's blood alcohol screening was below the legal limit and his driving was not particularly egregious or dangerous. For these reasons, it cannot be concluded that respondent's conduct on October 23, 2008 was sufficiently dangerous or injurious to himself or the public that it warrants denial of his application for registration as a pharmacy technician.

7. Title 16, California Code of Regulations, section 1769 provides in part:

"(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.”

The evidence in light of these criteria shows that respondent was convicted of one minor possession of a hypodermic needle offense three years ago. He committed the offense four years ago and was given the opportunity to avoid a conviction under Penal Code section 1000, but he was not successful, and he was returned to court, where he entered a guilty plea and was placed on probation for three years. He has completed probation and satisfied all the requirements imposed upon him by the court. Respondent was convicted of a reckless driving offense in 2009, and has not committed any offense since then.

Respondent's evidence of rehabilitation consists primarily of an excellent employment record. Upon graduating from high school in 1999, he has worked regularly in temporary jobs while going to community college and then in a series of minimum wage jobs. His current employer, where he has worked for five years, is satisfied with his work. Respondent hoped to be able to better himself and that is why he took the pharmacy technician course. In addition, respondent has actively volunteered with charitable organizations in his community.

Respondent admitted to using heroin and marijuana sporadically in the past, but testified he stopped using both drugs three years ago. His only conviction was for possession of a hypodermic needle and he admitted to the officer he had used it to consume heroin. Respondent's minor use of drugs is matched by his relatively minimal efforts at rehabilitation. He attends AA and NA meetings on a haphazard basis. There is no evidence that respondent ever stole or sold drugs, or possessed sufficient quantities that some could be sold.

The Board has a legitimate interest in making sure its licensees can be trusted not to divert drugs from a pharmacy and sell them on the street. The Board also has a legitimate concern about respondent's judgment in using drugs in the past. Balancing these concerns with the minor nature of respondent's criminal and drug history, and the absence of any evidence to believe that respondent has in the past stolen or sold drugs, it is reasonable to conclude that respondent should be given an opportunity to work as a pharmacy technician but under a probationary license.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a license, a license shall be issued to respondent and immediately revoked; the order of

revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with

the board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

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

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4047 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4047 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4047 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4047 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for

employment, whether the respondent is considered an employee, independent contractor or volunteer.

6. Probation Monitoring Costs

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

7. Status of License

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

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

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the board for surrender. The board or its designee 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. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

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

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

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known.

Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

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

10. Tolling of Probation

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

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work.

Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

11. Violation of Probation

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 that was stayed.

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 that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay

and/or revocation of the license. 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 automatically extended until the petition to revoke probation or accusation is heard and decided.

12. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

13. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

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

14. Work Site Monitor

Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing 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 ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the board, shall be considered a violation of probation.

15. Notification of Departure

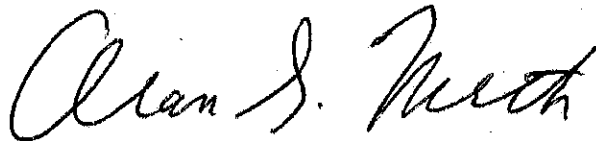
Prior to leaving the probationary geographic area designated by the board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation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

16. 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 or its designee, respondent shall provide documentation from the licensed practitioner that the prescription for the drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Respondent shall ensure that he or she is not in the same physical location as individuals who are using illicit substances even if respondent is not personally ingesting the drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia not supported by the documentation timely provided, and/or any physical proximity to persons using illicit substances, shall be considered a violation of probation.

DATED: May 31, 2012

A handwritten signature in cursive script that reads "Alan S. Meth". The signature is written in black ink and is positioned above a horizontal line.

ALAN S. METH
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues
Against:
12 **CHRISTOPHER ROBIN CLAUSI**
13 **721 S. Magnolia Avenue**
14 **Anaheim, CA 92804**
15 Respondent.

Case No. 4047

STATEMENT OF ISSUES

17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about June 14, 2010, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Christopher Robin Clausi
23 (Respondent). On or about June 8, 2010, Christopher Robin Clausi certified under penalty of
24 perjury to the truthfulness of all statements, answers, and representations in the application. The
25 Board denied the application on March 1, 2011.

26 ///
27 ///
28 ///

1 **JURISDICTION**

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

5 4. Section 4300 of the Code states:

6 ...

7 (c) The board may refuse a license to any applicant guilty of
8 unprofessional conduct.

9 ...

10 **STATUTORY PROVISIONS**

11 5. Section 475 of the Code states:

12 (a) Notwithstanding any other provisions of this code, the provisions
13 of this division shall govern the denial of licenses on the grounds of:

14 ...

15 (2) Conviction of a crime.

16 ...

17 (4) Commission of any act which, if done by a licentiate of the
18 business or profession in question, would be grounds for suspension or
19 revocation of license.

20 (b) Notwithstanding any other provisions of this code, the provisions
21 of this division shall govern the suspension and revocation of licenses on
22 grounds specified in paragraphs (1) and (2) of subdivision (a) .

23 ...

24 6. Section 480 of the Code states:

25 (a) A board may deny a license regulated by this code on the grounds
26 that the applicant has one of the following:

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

...

1 (3) (A) Done any act that if done by a licentiate of the business or
2 profession in question, would be grounds for suspension or revocation of
license.

3 (B) The board may deny a license pursuant to this subdivision only if
4 the crime or act is substantially related to the qualifications, functions, or
duties of the business or profession for which application is made.

5 ...

6 7. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted
8 by a board within the department pursuant to law to deny an application for a
license or to suspend or revoke a license or otherwise take disciplinary
9 action against a person who holds a license, upon the ground that the
applicant or the licensee has been convicted of a crime substantially related
10 to the qualifications, functions, and duties of the licensee in question, the
record of conviction of the crime shall be conclusive evidence of the fact
11 that the conviction occurred, but only of that fact, and the board may inquire
into the circumstances surrounding the commission of the crime in order to
12 fix the degree of discipline or to determine if the conviction is substantially
related to the qualifications, functions, and duties of the licensee in question.

13 As used in this section, 'license' includes 'certificate,' 'permit,'
14 'authority,' and 'registration.'

15 8. Section 4301 of the Code states:

16 "The board shall take action against any holder of a license who is guilty of unprofessional
17 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

18 Unprofessional conduct shall include, but is not limited to, any of the following:

19 ...

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

23 ...

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

1 degree of discipline or, in the case of a conviction not involving controlled
2 substances or dangerous drugs, to determine if the conviction is of an
3 offense substantially related to the qualifications, functions, and duties of a
4 licensee under this chapter. A plea or verdict of guilty or a conviction
5 following a plea of nolo contendere is deemed to be a conviction within the
6 meaning of this provision. The board may take action when the time for
7 appeal has elapsed, or the judgment of conviction has been affirmed on
8 appeal or when an order granting probation is made suspending the

9 imposition of sentence, irrespective of a subsequent order under Section
10 1203.4 of the Penal Code allowing the person to withdraw his or her plea of
11 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
12 or dismissing the accusation, information, or indictment.

13 REGULATORY PROVISIONS

14 9. California Code of Regulations, title 16, section 1769, states:

15 (a) When considering the denial of a facility or personal license under
16 Section 480 of the Business and professions code, the board, in evaluating
17 the rehabilitation of the applicant and his present eligibility for licensing or
18 registration, will consider the following criteria:

19 (1) The nature and severity of the act(s) or offense(s) under
20 consideration as grounds for denial.

21 (2) Evidence of any act(s) committed subsequent to the act(s) or
22 crime(s) under consideration as grounds for denial under Section 480 of the
23 Business and professions code.

24 (3) The time that has elapsed since commission of the act(s) or
25 crime(s) referred to in subdivision (1) or (2).

26 (4) Whether the applicant has complied with any terms of parole,
27 probation, restitution or any other sanctions lawfully imposed against the
28 applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

(b) When considering the suspension or revocation of a facility or a
personal license on the ground that the licensee or the registrant has been
convicted of a crime, the board, in evaluating the rehabilitation of such
person and his present eligibility for a license will consider the following
criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or
offense(s).

///

///

1 (4) Whether the licensee has complied with all terms of parole, probation,
2 restitution or any other sanctions lawfully imposed against the licensee.

3 (5) Evidence, if any, of rehabilitation submitted by the licensee.

4 10. California Code of Regulations, title 16, section 1770, states:

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

10 **FIRST CAUSE FOR DENIAL OF APPLICATION**

11 **(March 19, 2009 Conviction for Possession of a Hypodermic Needle on January 25, 2008)**

12 11. Respondent's application is subject to denial under Code section 480 subdivisions
13 (a)(1) and (a)(3)(A), and section 4301 subdivisions (l) in that he was convicted of a crime that is
14 substantially related to the qualifications, duties, and functions of a Pharmacy Technician. The
15 circumstances are as follows:

16 a. On or about March 26, 2008, in a criminal proceeding entitled *People of the*
17 *State of California v. Christopher Robin Clausi*, in Orange County Superior Court, Case Number
18 08CM03062, Respondent entered a plea of guilty of violating Business and Professions Code
19 section 4140, Possession of a Hypodermic Needle, a misdemeanor. The court ordered a deferred
20 entry of judgment and ordered Respondent to complete an 18 month drug diversion program.
21 Upon Respondent's successful completion of this program the charges against Respondent were
22 to be dismissed. Respondent did not complete the diversion program and on March 19, 2009,
23 Respondent was convicted. Respondent was also initially charged with violation of Health and
24 Safety Code section 11357 subdivision (b), possession of more than 28.5 grams of marijuana,
25 however those charges were dismissed as part of a plea agreement.

26 ///

27 ///

28 ///

1 Highway Patrol for failing to maintain his vehicle in a single lane. Upon contacting the
2 Respondent, the officer noticed a strong smell of marijuana emanating from Respondent's vehicle
3 and his person as well as the odor of alcohol on Respondent's breath. Respondent's eyes were
4 red, bloodshot and watery. Respondent admitted to having one alcoholic beverage prior to
5 driving but denied any marijuana use. Respondent was asked to complete a series of field
6 sobriety tests, which he failed. Upon failure of the field sobriety tests, Respondent was arrested
7 for reckless driving and suspicion of driving under the influence

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Unprofessional Conduct - Dangerous Use of Alcohol and drugs)**

10 13. Respondent's application is subject to denial under sections 480, subdivision
11 (a)(3)(A), and section 4301 (h) of the Code in that on or about October 23, 2008, Respondent
12 used alcoholic beverages to an extent or in a manner dangerous or injurious to himself and the
13 public when he was arrested for driving recklessly after consuming alcohol and/or drugs as
14 outlined in paragraph 12, above.

15 **PRAYER**

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

- 18 1. Denying the application of Christopher Robin Clausi for a Pharmacy Technician
19 Registration;
20 2. Taking such other and further action as deemed necessary and proper.

21 DATED: 9/23/11

22 Virginia Herold
23 VIRGINIA HEROLD
24 Executive Officer
25 Board of Pharmacy
26 Department of Consumer Affairs
27 State of California
28 *Complainant*

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