



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNOR EDMUND G. BROWN JR.

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Jose Angel Tejeda Caceres</u>	Case No. <u>AC 4243</u>
Address of Record: <u>7441 Vista del Monte Ave</u> <u>Van Nuys CA 91405</u>	

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BOARD OF PHARMACY
2013 DEC 16 AM 9:15

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy in Case No. AC 4243, I hereby request to surrender my pharmacy technician license License No. 102113. 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, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Jose Caceres
Applicant's Signature

Virginia Heald
Executive Officer's Approval

12-9-13
Date

12/19/13
Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

JOSE ANGEL TEJEDA CACERES,

Pharmacy Technician License No. TCH
102113,

Respondent.

Case No. 4243

OAH No. 2012120179

DECISION AFTER NONADOPTION

This matter was heard on February 27, 2013, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Jose Tejada Caceres (Respondent) was present and represented himself.

Virginia Herold, Executive Officer (Complainant), Board of Pharmacy, was represented by Cristina Felix, Deputy Attorney General.

Oral and documentary evidence was received and the matter was submitted on February 27, 2013.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy (hereinafter "Board") on March 5, 2013. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter issued an Order of Non-adoption on May 7, 2013, and subsequently, on June 5, 2013 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 of Pharmacy pursuant to Section 11517 of the Government Code hereby makes the following decision:

FACTUAL FINDINGS

1. On September 1, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician License Number TCH 102113 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein.

2. To qualify for licensure as a pharmacy technician under Business and Professions Code section 4202, an individual must establish that he or she is a high school graduate or possesses a general educational development certificate equivalent and: (1) holds an associate's degree in pharmacy technology; or (2) has completed a course of training specified by the Board; or (3) has graduated from a school of pharmacy recognized by the Board; or, (4) holds certification from the Pharmacy Technician Certification Board (PTCB). In addition, the applicant must not have been convicted of any crime and must not have engaged in any misconduct substantially related to the qualifications, functions, or duties of a registered pharmacy technician. Passing a competency examination is not required to become licensed as a pharmacy technician.

Pharmacy technicians are not independent practitioners, but work under the close supervision of registered pharmacists. Pharmacy technicians have access to controlled substances as a consequence of their employment.

3. Section 4300 of the Business and Professions Code¹ provides, in pertinent part, that every license issued by the board is subject to discipline, including suspension or revocation.

4. Section 4301 of the Code states:

"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:

¶...¶

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

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

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

"(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."

¶...¶

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

¶...¶

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

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

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

6. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to 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. Complainant established that the Board incurred reasonable costs of investigation and enforcement in the sum of \$5,012.50.

7. Respondent was convicted of "Vehicular Hit and Run" in August 2009, and "Driving Under the Influence of Alcohol" in October 2008. Both of these convictions occurred before September 1, 2010, the date Respondent was issued his license. The Board was aware of these convictions when it issued Respondent an unrestricted license. As such, these two convictions are only considered for aggravation purposes, rather than as bases for discipline, which is how Complainant alleged these two convictions in the Accusation. When questioned at hearing about

witness statements and a police officer's report in 2009 that there was a "strong smell of alcohol emitting from [respondent's] mouth," Respondent denied that he was intoxicated for the "hit and run" conviction in 2009. (RT 27:12-25, 28:1-5.) (State's Ex. 4, AGO 00082.) The Administrative Law Judge in this matter determined that the evidence did not establish why the Board issued Respondent an unrestricted license despite these two convictions.

8. On June 4, 2011, Respondent drove while intoxicated and he was convicted, after pleading *nolo contendere*, in August 2011 of "Driving Under the Influence of Alcohol." The circumstances surrounding the conviction include that: on or about June 4, 2011, officers from the Van Nuys police department were called to investigate a "hit and run" traffic collision in the City of Van Nuys. The officers ran the license plate of the vehicle that had reportedly left the scene through the DMV's database and obtained an address of record for the vehicle. Upon arriving at the address where the vehicle was registered, the officers observed a vehicle with the same license plate reported in the "hit and run" collision parked directly across the street from the address on record. The officers observed that the vehicle had recent, major front end damage, and was missing its front bumper. The hood was also smashed in and the vehicle was leaking radiator fluid on the street. Respondent later showed up to the location. Officers observed Respondent staggering, and having trouble walking in a straight line. As Respondent got within approximately five feet of the officer, the officer immediately could smell a strong odor of an alcoholic beverage emitting from Respondent's person, and observed Respondent to have bloodshot and watery eyes, and that Respondent appeared to have flushed/red colored cheeks. Respondent later admitted to the officers that he was involved in the collision. Respondent also admitted to the officers that he drove his car home and parked it following the collision. The officers' arrest report stated that Respondent clearly displayed the objective symptoms of being under the influence. (State's Ex. 3, AGO 00048-00051.) The events leading to this conviction took place approximately ten (10) months after Respondent was issued his pharmacy technician's license.

9. Board inspector Anna Yamada is a licensed pharmacist and experienced Board inspector. She testified at hearing that the duties of a pharmacy technician include: intake and processing of prescriptions, pulling drugs, stocking drugs, counting, billing, labeling and handing out drugs. A pharmacy technician would have access to confidential patient information, and all dangerous drugs, including narcotics as a result of his or her duties in the pharmacy. (RT 12:17-25, 13:1-10.) She also testified regarding what would happen if a pharmacy technician were to be impaired by drugs or alcohol while on the job. In particular, Inspector Yamada stated:

As a pharmacist in a pharmacy, we have to trust that everybody that's working in the pharmacy is going to obey the law, because there are a lot of laws that regulate a professional pharmacy but as well as the patients' safety. Because although we are supervising them, we are not looking over their shoulders every minute, so we have to entrust that they have the decision-making process and

they are not impaired in doing the proper filling/compounding of the medication. (RT 13:13-22.)

10. Respondent presently lives in the "back-house" of his parents' residence. He is employed as a freight dispatcher for a company called Landstar. Prior to his present employment, he was employed by a marble and granite company. Since he obtained his license, Respondent worked only one month as a pharmacy technician, which occurred immediately after his licensure. Thereafter, Respondent determined he could not live on the income he earned as a pharmacy technician and he sought, and has worked at, more lucrative jobs since being licensed.

11. Respondent would like to keep his license in case he ever needs to work as a pharmacy technician, and also because he may one day attempt to obtain his license to work as a pharmacist. Respondent indicated at hearing that he would not have a problem with being "monitored" by the board as a condition of probation and that he felt that he could "balance both jobs" (as a pharmacy technician and in his current job) if he got the opportunity. (RT 31:9-11, 31:12-24.)

12. Respondent represented at hearing that he has "accepted the Lord" into his life and has made positive strides to change his lifestyle. He has not used alcohol since June 2012 and he attends Alcohol Anonymous meetings one or two times a week. Respondent finds these meetings helpful as a tool to maintain his sobriety. Respondent believes he "had" a drinking problem until he "got out of his denial stage." While Respondent does not seem to yet realize that alcoholism is a life-long issue, he has realized that he has a problem with alcohol, and this is a very positive step toward rehabilitation. None of his convictions involved his employment and all occurred when he was not working. No evidence was presented that Respondent's alcohol abuse ever affected his ability to function at work. However, Respondent has only worked for a very short time as a pharmacy technician, so this finding was not given great weight.

13. The Administrative Law Judge determined that the Complainant incurred reasonable costs totaling \$5,012.50.

LEGAL CONCLUSIONS AND DISCUSSION

1. A nonprofessional license typically is issued without the need to demonstrate any specific education or skill and upon the mere showing of good character. In contrast, an applicant for a professional license must ordinarily satisfy extensive educational and training requirements, and then pass a rigorous state-administered competency examination. The sharp distinction between professional licenses and nonprofessional licenses supports a distinction in the standards of proof needed to revoke or discipline these two different types of licenses. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 319.)

An administrative disciplinary action seeking to suspend or revoke a professional license requires proof by "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) An administrative disciplinary action seeking to suspend or revoke an occupational license requires proof by a preponderance of the evidence.

2. The standard of proof required to suspend or revoke the registration issued to a pharmacy technician is a preponderance of the evidence (see Factual Finding 2). Thus, the preponderance of the evidence standard applies. (*Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 320-321.)

3. Cause exists and Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivisions (h), (l) and (k), of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent committed crimes which involved the use of alcohol in a manner which was dangerous to himself and others, and said crimes were substantially related to the qualifications functions or duties of a licensed pharmacy technician which evidences his potential unfitness to perform the functions authorized by his license. (Factual Findings 1-13.)

4. The Board has the responsibility to protect the public. In discharging this responsibility the Board has promulgated disciplinary guidelines, incorporated by reference at Title 16, California Code of Regulations section 1760. In its guidelines, the Board has established four categories of misconduct. Each category has a range of recommended discipline. A category I violation is a relatively minor offense with a minimum penalty of one year probation. A category IV violation is considered the most serious offense, which should result in revocation of a license. Respondent's conviction for DUI is considered a category III offense because it involved misuse of alcohol and presented a serious potential for harm. The guidelines also set forth factors to be considered in determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case as follows:

- a). Actual or potential harm to the public – Here, respondent's actions created potential harm to the public.
- b). Actual or potential harm to any consumer – Respondent's conduct underlying his DUI conviction, drinking while driving, creates potential harm to the public. Respondent's history of alcohol problems and his DUI conviction show a lack of good judgment and an inability to comply with rules.
- c). Prior disciplinary record, including level of compliance with disciplinary order(s) – Respondent has no prior discipline.

- d). Prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s) – Respondent has not received any prior warnings, citations or fines from the Board.
- e). Number and/or variety of current violations – Respondent has one current conviction for DUI under consideration. However, in aggravation, Respondent has a history of DUI convictions and one “hit and run” conviction.
- f). Nature and severity of the act(s), offense(s) or crime(s) under consideration – Respondent’s misconduct was serious with the potential for tragic consequences.
- g). Aggravating evidence – As discussed in Factual Finding 7, Respondent has a history of drinking and driving, and “hit and run” accidents.
- h). Mitigating evidence – Respondent has no prior history of discipline, which is a factor in mitigation.
- i). Rehabilitation evidence – Respondent presented minimal efforts at rehabilitation as described in Factual Finding 10.
- j). Compliance with terms of any criminal sentence, parole, or probation – Respondent remains on probation for his DUI conviction.
- k). Overall criminal record – Respondent has two DUI convictions and one “hit and run” conviction.
- l). If applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code – The DUI conviction from August 2011 has not been expunged.
- m). Time passed since the act(s) or offense(s) – Respondent’s August 2011 DUI conviction is approximately two years old.
- n). Whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct – Respondent’s conduct of driving after drinking alcoholic beverages is an intentional act.
- o). Financial benefit to the respondent from the misconduct – Respondent received no financial benefit from his misconduct.

5. Pharmacy technicians hold positions of trust and are expected to practice unimpaired and with safety to the public. Pharmacy technicians are also expected to exercise good judgment at all times for the protection of the public. However, Respondent's August 2011 DUI conviction and history of convictions show a lack of good judgment, an inability to comply with rules, and a pattern of abusing alcohol. Respondent's minimal efforts at rehabilitation and Respondent's failure to recognize that drinking is a life-long problem, concerns the Board. In addition, Respondent has not had a significant period of work as a pharmacy technician "in the field" that has been monitored by the Board to ensure protection of the public. Under these circumstances, it would not be appropriate for Respondent to continue to hold an unrestricted license in this case. It is concluded that Respondent's license should be revoked, that the order of revocation should be stayed, and that Respondent's license should be placed on three years' probation on terms and conditions that will assure the protection of the public. (Factual Findings 2-12.)

6. In addition, grounds exist to order respondent to pay the Board \$5,012.50 under Business and Professions Code section 125.3, for reasonable costs of investigation and prosecution of this matter, based on Factual Finding 13.

ORDER

Pharmacy Technician License Number 102113, issued to Respondent JOSE ANGEL TEJEDA CACERES, is revoked. However, the revocation is stayed and Respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

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

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

Failure to comply with this suspension shall be considered a violation of probation.

2. 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; or,
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license 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.

3. Reporting 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 extended automatically until such time as the final report is made and accepted by the board.

4. Interview with the Board.

Upon receipt of reasonable notice, respondent shall appear in person for interviews with the board 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.

5. Cooperation 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 probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers.

During the period of probation, Respondent shall notify all present and prospective employers of this decision in case number 4243, 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 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 4243 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his 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 direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of this decision in case number 4243 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 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 4243 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his 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.

7. Reimbursement of Board Costs.

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,012.50. Such costs shall be payable to the Board on a schedule as directed by the board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

8. 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.

9. 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, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

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

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.

11. 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 forty (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. Such periods of time shall not apply to the reduction of the probation period. 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.

12. 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 which 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.

13. 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 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.

14. Completion of Probation.

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

15. 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 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 pharmacy technician's 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.

16. 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., Alcoholic Anonymous, Cocaine 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.

17. Random Drug Screening.

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the Board or its designee. At all times respondent shall fully cooperate with the Board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the Board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected 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. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the Board in writing.

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

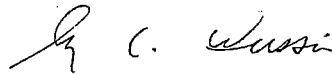
Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

This decision shall become effective on September 16, 2013.

It is so ORDERED on August 16, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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

In the Matter of the Accusation Against:

JOSE TEJEDA CACERES
Pharmacy Technician Registration No.
TCH 102113

Case No. 4243

OAH No. 2012120179

Respondent.

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

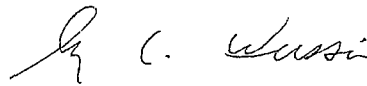
ORDER OF NONADOPTION OF PROPOSED DECISION

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 Administrative case No. 4243. 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 the submission of written argument.

IT IS SO ORDERD this 7th day of May 2013.

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 Accusation Against:-

JOSE ANGEL TEJEDA CACERES,

Respondent.

Case No. 4243

OAH No. 2012120179

PROPOSED DECISION

This matter was heard on February 27, 2013, by Chris Ruiz, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California.

Jose Caceres (Respondent) was present and represented himself.

Virginia Herold, Executive Officer (Complainant), Board of Pharmacy, was represented by Christina Felix, Deputy Attorney General.

Oral and documentary evidence was received and the matter was submitted on February 27, 2013.

FACTUAL FINDINGS

1. On September 1, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician License Number TCH 102113 to Respondent. The Pharmacy Technician License was in full force and effect at all times relevant to the charges brought herein.

2. Section 4300 of the Business and Professions Code¹ provides, in pertinent part, that every license issued by the board is subject to discipline, including suspension or revocation.

3. Section 4301 of the Code states:

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

"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:

¶ . . . ¶

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

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

"(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."

¶ . . . ¶

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

¶ . . . ¶

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

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

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

5. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to 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. Complainant established that the Board incurred reasonable costs of investigation and enforcement in the sum of \$5,012.50.

6. Respondent was convicted of "Vehicular Hit and Run" in August 2009, and "Driving Under the Influence of Alcohol" in October 2008. Both of these convictions occurred before September 1, 2010, the date Respondent was issued his license. The Board was aware of these convictions when it issued Respondent an unrestricted license. As such, these two convictions are only considered for aggravation purposes, rather than as bases for discipline, which is how Complainant alleged these two convictions in the accusation. The evidence did not establish why the Board issued Respondent an unrestricted license despite these two convictions.

7. On June 4, 2011, Respondent drove while intoxicated and he was convicted in August 2011 of "Driving Under the Influence of Alcohol." The events leading to this conviction took place approximately 10 months after Respondent was issued his license.

8. Respondent presently lives in the "back-house" of his parents' residence. He is employed as a freight dispatcher for a company called Landstar. Prior to his present employment, he was employed by a marble and granite company. Since he obtained his license, Respondent worked only one month as a pharmacy technician, which occurred immediately after his licensure and which was required by his licensure. Thereafter, Respondent determined he could not live on the income he earned as a pharmacy technician and he sought, and has worked at, more lucrative jobs since being licensed.

9. Respondent would like to keep his license in case he ever needs to work as a pharmacy technician, and also because he may one day attempt to obtain his license to work as a pharmacist.

10. Respondent has "accepted the Lord" into his life and has made positive strides to change his lifestyle. He has not used alcohol since June 2012 and he attends Alcohol Anonymous meetings one or two times a week. Respondent finds these meetings helpful as a tool to maintain his sobriety. Respondent believes he "had" a drinking problem until he "got out of his denial stage." While Respondent does not seem to yet realize that alcoholism is a life-long issue, he has realized that he has a problem with alcohol, and this is a very positive step toward rehabilitation. None of his convictions involved his employment and all occurred when he was not working. No evidence was presented that Respondent's alcohol abuse ever affected his ability to function at work. However, Respondent has only worked for a very short time as a pharmacy technician, so this finding was not given great weight.

11. Complainant incurred reasonable costs totaling \$5,012.50.

LEGAL CONCLUSIONS AND DISCUSSION

1. Cause exists and Respondent is subject to disciplinary action under sections 490, 4300 and 4301, subdivisions (h), (l) and (k), of the Code, in conjunction with California Code of Regulations, title 16, section 1770, on the grounds of unprofessional conduct, in that Respondent committed crimes which involved the use of alcohol in a manner which was dangerous to himself and others, and said crimes were substantially related to the qualifications functions or duties of a licensed pharmacy technician which evidence his potential unfitness to perform the functions authorized by his license. (Factual Findings 1-10.)

2A. If Respondent had initially been issued a probationary license, his August 2011 conviction would almost surely be substantial reason to revoke his license. However, administrative proceedings to revoke, suspend, or impose discipline on a professional license are noncriminal and nonpenal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal. 4th 763, 785-786.) Since Respondent has not truly utilized his license since it was issued in September 2010, it is highly likely that he will continue to work at more lucrative employment, rather than returning to work as a pharmacy technician. As such, if he was issued a probationary license, the term of probation would be stayed until such time as Respondent returned to work as a pharmacy technician. If he failed to return to work as a pharmacy technician within three years, his license could be revoked for violating the terms of his probation.

2B. Allowing Respondent a period of time to decide what avenue of employment he wishes to ultimately chose will not put the public at risk. If Respondent later choses to not return to work as a pharmacy technician, he could investigate surrendering his license, as compared to having it revoked. Revoking his license at this time would result in punishing him by making it highly unlikely that he could ever obtain a license as a pharmacist. The following order sufficiently protects the public by allowing the Board to closely monitor Respondent. Further, Respondent will be required to notify any prospective employer of this decision, and the employer will also monitor Respondent. Any violation of the broad and precise terms of probation would give the Board cause to seek revocation of Respondent's license. Further, Respondent's repayment of the costs, and compliance with the many terms of probation, will serve as a reminder to him of the results of his prior decisions, and will allow the Board to asses whether or not Respondent is truly serious in keeping his license. (Factual Finding 2-10.)

ORDER

Pharmacy Technician License Number 102113956, issued to Respondent JOSE ANGEL CACERES, is revoked pursuant to Legal Conclusions 1-2B, individually and jointly. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

Obey All Laws

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

Reporting to the Board

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

Interview with the Board

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

Cooperation with Board Staff

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

Notice to Employers

Respondent shall notify all present and prospective employers of this decision, and the terms, conditions and restrictions imposed on respondent by the decision.

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

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of this decision in advance of the respondent commencing work at each pharmacy.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician, whether the respondent is considered an employee or independent contractor.

Reimbursement of Board Costs

Respondent shall pay to the board its costs of investigation and prosecution in the amount of \$5,012.50. Respondent shall make said payments as follows: \$104.43 per month for the 48 months immediately following this decision and beginning 30 days after the effective date of this decision.

If respondent fails to pay the costs as specified by the board and on the date(s) determined by the board, the board shall, without affording the respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed.

Probation Monitoring Costs

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

Status of License

Respondent shall, at all times while on probation, maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If respondent's technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

Notification of Employment/Mailing Address Change

Respondent shall notify the board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving and/or the address of the new employer, supervisor or owner and work schedule, if known. Respondent shall notify the board in writing within 10 days of a change in name, mailing address or phone number.

Tolling of Probation

Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician or an exemptee in California, respondent must notify the board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall

not apply to the reduction of the probation period. It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

Violation of Probation

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

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

Continuing Education

Respondent shall provide evidence of efforts to maintain skill and knowledge as a pharmacist as directed by the board or its designee.

Medical Evaluation

Within thirty (30) days of the effective date of this decision, and on a periodic basis thereafter as may be required by the board or its designee, respondent shall undergo a medical evaluation, at respondent's own expense, by a board-appointed or board-approved physician who shall furnish a medical report to the board. The approved physician shall be provided with a copy of the board's accusation and decision. A record of this notification must be provided to the board upon request. Respondent shall sign a release authorizing the physician to furnish the board with a current diagnosis and a written report regarding the respondent's ability to function independently as a pharmacist with safety to the public. Respondent shall comply with all the recommendations of the physician if directed by the board or its designee.

If the physician recommends, and the board or its designee directs, that respondent undergo medical treatment, respondent shall, within thirty (30) days of written notice from the board, submit to the board or its designee, for prior approval, the name and qualifications of a licensed physician of respondent's choice. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of treatment with the approved physician. Should respondent, for any reason, cease treatment with the approved physician, respondent shall notify the board immediately and, within thirty (30) days of ceasing treatment, submit the name of a replacement physician of respondent's choice to the board or its designee for prior approval. Within thirty (30) days of approval

thereof, respondent shall submit documentation to the board demonstrating the commencement of treatment with the approved replacement. Failure to comply with any deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent physician, respondent shall undergo and continue treatment with that physician, at respondent's own expense, until the treating physician recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further treatment is necessary. Upon receipt of such recommendation from the treating physician, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's own expense, a medical evaluation by a separate board-appointed or board-approved physician. If the approved evaluating physician recommends that respondent continue treatment, the board or its designee may require respondent to continue treatment. Respondent shall take all necessary steps to ensure that any treating physician submits written quarterly reports to the board concerning respondent's fitness to practice, progress in treatment, and other such information as may be required by the board or its designee. If at any time an approved evaluating physician or respondent's approved treating physician determines that respondent is unable to practice safely or independently as a pharmacist, the evaluating or treating physician shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume practice until notified by the board that practice may be resumed. Failure to comply with this suspension shall be considered a violation of probation. Commencing on the effective date of this decision, respondent shall not work as a pharmacy technician until notified in writing by the board that respondent has been deemed medically fit to practice safely and independently, and the board or its designee approves said recommendation.

If recommended by the evaluating physician and approved by the board, respondent shall be suspended from working as a pharmacy technician the treating physician recommends, in writing, stating the basis therefor, that respondent can safely and independently resume working as a pharmacy technician, and the board or its designee approves said recommendation. Respondent shall not resume practice until notified by the board that practice may be resumed. Failure to comply with this suspension shall be considered a violation of probation.

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 substanc-

es, 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.

Completion of Probation

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

License Surrender While on Probation/Suspension

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

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

Attend Substance Abuse Recovery Relapse Prevention and Support Groups

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

Random Drug Screening

Respondent, at his or her own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the board. The length of time shall be for the entire probation period and the frequency of testing will be determined by the board. At all times respondent shall fully cooperate with the board, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other con-

trolled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by respondent. Respondent may not resume the practice of pharmacy until notified by the board in writing.

Notification of Departure

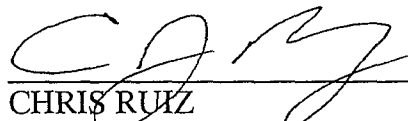
If respondent leaves the geographic area for a period greater than 24 hours, respondent shall notify the board verbally and in writing of the dates of departure and return, prior to leaving.

Tolling of Suspension

If respondent leaves California to reside or practice outside this state, or for any period exceeding 10 days (including vacation), respondent must notify the board in writing of the dates of departure and return. Periods of residency or practice outside the state or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period. Respondent shall not act as a pharmacy technician upon returning to this state until notified by the board that the period of suspension has been completed.

IT IS SO ORDERED.

DATED: March 4, 2013.



CHRIS RUIZ
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against: . Case No. 4243
12 **JOSE ANGEL TEJEDA CACERES**
7441 Vista Del Monte Avenue
13 Van Nuys, CA 91405
14 Pharmacy Technician Registration No. TCH
102113
15
16 Respondent.

ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Board).
22 2. On or about September 1, 2010, the Board of Pharmacy issued Pharmacy Technician
23 License No. TCH 102113 to Jose Angel Tejada Caceres (Respondent). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expired on June 30, 2012, and has not been renewed.

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1 7. Section 4301 states, in pertinent part:

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

5

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

11

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

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

1 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
2 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
3 indictment."

4 **REGULATORY PROVISION**

5 8. California Code of Regulations, title 16, section 1770, states:

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

12 **COST RECOVERY**

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

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Convictions of Substantially-Related Crimes)**

19 10. Respondent is subject to disciplinary action under sections 490, 4300, and 4301,
20 subdivision (l), in conjunction with California Code of Regulations, title 16, section 1770, on the
21 grounds of unprofessional conduct, in that Respondent was convicted of crimes substantially
22 related to the qualifications, functions or duties of a registered pharmacy technician which to a
23 substantial degree evidence his present or potential unfitness to perform the functions authorized
24 by his registration in a manner consistent with the public health, safety, or welfare, as follows:

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1 a. On or about August 22, 2011, after pleading *nolo contendere*, Respondent was
2 convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b)
3 [driving a vehicle while having 0.08% and more, by weight, of alcohol in the blood], in the
4 criminal proceeding entitled *The People of the State of California v. Jose Angel Caceres* (Super.
5 Ct. Los Angeles County, 2011, No. 1VY03053). The court sentenced Respondent to serve 16
6 days in jail, placed Respondent on probation for a period of 48 months, and fined him. The
7 circumstances surrounding the conviction are that, on or about June 04, 2011, officers from the
8 Van Nuys Police Department were dispatched to investigate a "hit and run" traffic collision in the
9 city of Van Nuys. As part of the investigation, officers ran the license plate through DMV
10 records and obtained an address on record. Officers arrived at the address and observed a vehicle
11 with the same license plate reported in the "hit and run" traffic collision parked directly across
12 from the address on record. Officers observed the vehicle to have major front end damage, a
13 smashed hood, and a missing front end bumper, as reported in the traffic collision. Officers
14 approached the address and knocked on the door with no response. While officers were making a
15 vehicle impound report, a male approached the officers stating that he had received a call from
16 Respondent, who was his brother, informing him that he had just been involved in an accident
17 while driving his sister's vehicle. The Respondent then showed up to the location and was
18 identified by his brother. Officers observed Respondent staggering, and having trouble walking.
19 As Respondent got closer, the officers smelled a strong odor of an alcoholic beverage emitting
20 from Respondent's person, and observed Respondent to have bloodshot and watery eyes, and
21 flushed colored cheeks. Respondent displayed objective symptoms of being under the influence
22 of an alcoholic beverage and he admitted to the officers that he was involved in the accident.
23 Respondent was later identified by witnesses to be the driver of the vehicle involved in the
24 accident. Respondent agreed to have a blood test while at the police station and had a result of
25 0.16% of alcohol in his blood. Subsequently, Respondent was booked and arrested for violating
26 Vehicle Code section 23152, subdivision (b).

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THIRD CAUSE FOR DISCIPLINE

(Dangerous Use of Alcohol and / or Drugs)

12. Respondent is subject to disciplinary action under sections 4300 and 4301, subdivision (h), on the grounds of unprofessional conduct, in that Respondent administered to himself alcohol and / or drugs to the extent or in a manner as to be dangerous or injurious to himself or others. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 10, subparagraphs (a) through (c), inclusive, as though set forth fully.


PRAYER

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

1. Revoking or suspending Pharmacy Technician License No. TCH 102113, issued to Jose Angel Tejada Caceres;
2. Ordering Jose Angel Tejada Caceres to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

8/30/12



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

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