

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

In the Matter of the Accusation Against:

MICHAEL M. CASEY
4859 Alta Drive
Sacramento, CA 95822

Pharmacy Technician Registration
No. TCH 95782

Respondent.

Case No. 4293

OAH No. 2012110168

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following change is made to paragraph one on page one:

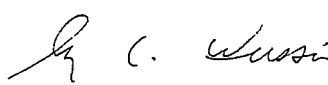
“It seeks to revoke respondent’s license to act as a Pharmacy Technician (Registration No. TCH 95782), which is currently in full force and effect and will expire on December 31, 2013.”

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on January 13, 2014.

IT IS SO ORDERED this 13th day of December, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

MICHAEL M. CASEY,

Respondent.

Case No. 4369

OAH No. 2013020041

PROPOSED DECISION

Administrative Law Judge Allan H. Keown, State of California, Office Administrative Hearings, heard this matter on September 16, 2013 in Sacramento, California.

Stephanie Alamo-Latif, Deputy Attorney General, appeared on behalf of complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Michael M. Casey (respondent) was present and represented himself throughout the hearing.

Evidence was received, the record closed, and the case submitted for decision on September 16, 2013.

FACTUAL FINDINGS

Procedural History

1. Virginia Herold (complainant), Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, brought this Accusation solely in her official capacity on December 14, 2012. It seeks to revoke respondent's license to act as a Pharmacy Technician (Registration No. TCH 95785), which is currently in full force and effect and will expire on December 31, 2013.

2. Respondent filed a Notice of Defense and requested a hearing on January 21, 2013.

Cause for Discipline – 2007 Prior Conviction for DUI

3. On or about July 3, 2007, in Case No. 07T02359, in the Superior Court of California, County of Sacramento, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol count (BAC) over .08) with an enhancement under section 23578 (a BAC count of .15 or above, .21), a misdemeanor. Respondent completed three years of probation as part of his sentence for this conviction.

Cause for Discipline --2012 Conviction for DUI, a Crime Related to Respondent's License

4. On or about January 24, 2012, in Case No. 11T06524, in the Superior Court of California, County of Sacramento, respondent was convicted of violating Vehicle Code section 23152, subdivision (b) (driving with a BAC over .08), a misdemeanor.

5. Respondent was sentenced to serve 20 days in the county jail with credit for time served of one day and to serve four years of informal probation. That period of probation has approximately two years left. As part of his sentence, respondent has completed 17 of 18 months in an alcohol rehabilitation program at Oak Tree Rehabilitation Center in Sacramento, California.

6. The circumstances underlying respondent's DUI conviction were that he drove through a drive-thru in the Jack-in-the-Box at 5800 Freeport Boulevard in Sacramento, California on December 9, 2012. He was reported to the police as driving drunk. When the responding officers contacted him, he was parked in the parking lot of the restaurant; they observed an open container of alcohol (a bottle of Coors Light) in the center console. Respondent refused to perform the field sobriety tests, and he blew a .249 BAC breath test. His eyes appeared bloodshot and watery, and he had a very strong odor of alcohol on his person. He was arrested and taken to the county jail, where he first blew a .25 BAC and then blew a second BAC of .26.

7. Complainant has met her burden of proving by clear and convincing evidence that respondent is subject to discipline for unprofessional conduct under Business and Professions Code section 4301, subdivision (l), and California Code of Regulations, title 16, section 1770, because respondent's DUI conviction is substantially related to the qualifications, functions, and duties of a registered pharmacy technician.

Cause for Discipline – Multiple Convictions for Convictions Involving Alcohol

8. Complainant has met her burden of proving by clear and convincing evidence that respondent is subject to discipline for unprofessional conduct under Business and Professions Code, section 4301, subdivision (k), because he has been convicted of more than one misdemeanor involving the consumption of alcohol, as set forth in Findings 3 through 6, *supra*.

Cause for Discipline – Dangerous or Injurious Use of Alcohol

9. Complainant has met her burden of proving by clear and convincing evidence that respondent is subject to discipline for unprofessional conduct under Business and Professions Code, section 4301, subdivision (h), because he has used alcohol to the extent and in a manner as to be dangerous and injurious to himself and to the public, as set forth in Findings 3 through 6, *supra*.

The Absence of Any Significant Evidence of Rehabilitation

10. Respondent testified that his participation in the Oak Tree rehabilitation program “helped him out a lot,” that they run the program “like a family” with a “very supportive structure,” and that he has completed 17 of the 18 months of his program and has one more month left. His sobriety date is December 9, 2011, the date of his last arrest. He stated that he does not intend to drink again because he has “learned from his prior actions” and convictions.

11. Respondent stated that he is currently employed by Sprouts supermarket and is not working as a pharmacy technician. He had been working at Rite Aid in Land Park, Sacramento, until he was released pursuant to a settlement agreement with the store and his union.

12. Respondent did not present any evidence either of his involvement in community or privately sponsored programs designed to better the community or of his interpersonal relationships and how they have changed since his second DUI conviction. He did not call any witnesses or present any letter(s) attesting to how his life is now different and, specifically, how he has “learned from his prior actions.”

13. Respondent currently is on probation for his second DUI with a BAC of .25, and he will remain on probation until January 2016. In evaluating claims of rehabilitation in the context of administrative licensing litigation, there are several well-recognized, longstanding principles that guide judicial considerations of rehabilitation from criminal conduct in the licensing arena. Evidence of rehabilitation is more persuasive if it is offered after a period of probation has been accomplished, at which time it can be shown that the licensee has re-attained the standard of fitness to practice his profession. (See *In re Giddens* (1981) 30 Cal.3d 110, 116 citing *In re Petty* (1981) 29 Cal.3d 356, 362.) That is, “remorse does not demonstrate rehabilitation....[A] truer indication of rehabilitation will be presented if [a licensee] can demonstrate his sustained conduct over an extended period of time that he is once again fit to practice [his profession].” (*In re Menna* (1995) 11 Cal.4th 975, 991 citing *In re Conflenti* (1981) 29 Cal.3d 120, 124-125; see also *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 942 (adequate showing of rehabilitation of seven and nine years with exemplary record as sufficient to show rehabilitation).)

Discussion

14. Each of respondent's two DUI convictions involves drinking and driving with an extremely high BAC, each at nearly three times the prohibited .08 BAC level. The California Supreme Court has regularly emphasized the importance of the Legislature's purpose "in proscribing *driving* while under the influence, the ... legislative purpose [being] primarily to *protect the public* and guard against the threat of injury to others." (See, e.g., *People v. Canty* (2004) 32 Cal.4th 1266, 1279 (emphases in original).) And the Court similarly had emphasized fifteen years earlier in 1979 that it was "crystal clear to us that courts in the formulation of rules on damage assessment and in weighing the deterrent function must recognize the severe threat to the public safety which is posed by the intoxicated driver. The lesson is self-evident and widely understood. Drunken drivers are extremely dangerous people." (*Taylor v. Superior Court* (1979) 24 Cal.3d 890, 899.) Respondent's license must be revoked in light of this jurisprudence.

15. Given this record, it is clear that it would be against the public interest to determine otherwise. (See *Goldberg v. Barger* (1974) 37 Cal.App.3d 987, 995-996 (the term "public interest" in the context of regulating the business of insurance to protect the public is legitimate and needs no extended discussion of the necessity for requiring and maintaining professional standards of conduct on the part of licensees).) The Department has met its burden of proving that respondent's license must be revoked pursuant to Business and Professions Code section 4301, subdivision (h) (using alcoholic beverages to the extent or in a manner to be dangerous or injurious to oneself or the public), subdivision (k) (a conviction of more than one misdemeanor involving the consumption of alcoholic beverages), and subdivision (l) (the conviction of a crime substantially related to the qualification functions, and duties of a licensee). Further, he has not established that he has engaged in sufficient rehabilitation to retain his license.

Costs

16. Complainant has requested that respondent be ordered to pay costs of prosecution incurred for the legal work performed by the Attorney General's Office in this matter.

The Department of Justice provided a billing summary of time spent working on this case which showed that the Deputy Attorney General assigned to this case spent nine hours total, and those included various matters of time activity by professional type including case evaluation/assessment and case management. Total costs that the Department of Justice billed to the Board through August 21, 2013, were \$1,530.00.

LEGAL CONCLUSIONS

Cause for Discipline – 2012 Conviction for DUI, a Crime Related to Respondent's License

1. The Board may discipline one of its licensees for unprofessional conduct where he or she has been convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. (Bus. and Prof. Code, § 4301, subd. (l).) Respondent's 2012 conviction for DUI is substantially related to the qualifications, functions, and duties of a pharmacy technician because it evidences present and potential unfitness to perform the functions authorities by his license in a manner consistent with the public health, safety, and welfare." (Cal. Code of Regs, tit. 16, § 1770.) Cause for disciplinary action exists for the reasons set forth in Findings 3 through 6, and 15. Quite plainly, it would be against the public interest to permit respondent to continue working as a pharmacy technician in the State of California. (Finding 15.)

Cause for Discipline – Multiple Convictions for Consumption of Alcoholic Beverages

2. Cause for disciplinary action for unprofessional conduct also exists under Business and Professions Code section 4301, subdivision (k), in that respondent has been convicted of two misdemeanors involving the consumption of alcohol. (Findings 3, 4, and 8.)

Cause for Discipline – Dangerous and Injurious Use of Alcohol

3. Cause for disciplinary action for unprofessional conduct also exists under Business and Professions Code section 4301, subdivision (h), in that respondent has been convicted of using alcohol to the extent and in a manner as to be dangerous and injurious to himself or the public. (Findings 3, 4, and 9.)

The Absence of Any Substantial Evidence of Rehabilitation

4. The matters set forth in Findings 10 through 13 have been considered. Respondent did not establish that he has engaged in sufficient rehabilitation to demonstrate that it would be consistent with the public interest to allow him to continue working as a registered pharmacy technician in California. (Finding 15.)

Costs

5. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include


whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

Complainant is seeking \$1,530.00 in prosecution costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable.

ORDER

The pharmacy technician license issued to Michael M. Casey by the Board of Pharmacy is hereby REVOKED pursuant to Legal Conclusions 1 through 4, jointly and individually. In addition, respondent is ordered to pay complainant \$1,530.00 in prosecution costs. (Legal Conclusion 5.)

DATED: November 5, 2013



ALLAN H. KEOWN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4369

12 **MICHAEL M. CASEY**
13 **4859 Alta Drive**
Sacramento, CA 95822

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **95782**

16 Respondent.

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.

22 2. On or about January 29, 2010, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 95782 to Michael M. Casey (Respondent). The registration was in full
24 force and effect at all times relevant to the charges herein, and will expire on December 31, 2013,
25 unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4301 of the Code states in pertinent part:

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

9 ...

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

15 ...

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

19 "(l) The conviction of a crime substantially related to the qualifications, functions, and
20 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
21 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
22 substances or of a violation of the statutes of this state regulating controlled substances or
23 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
24 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
25 The board may inquire into the circumstances surrounding the commission of the crime, in order
26 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
27 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
28 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or

1 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
2 of this provision. The board may take action when the time for appeal has elapsed, or the
3 judgment of conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
5 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
6 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.

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

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

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

19 **PRIOR CONVICTION**

20 7. On or about July 3, 2007, in a prior criminal proceeding entitled *People v. Michael M.*
21 *Casey* in Sacramento County Superior Court, Case Number 07T02359, respondent was convicted
22 for violating Vehicle Code section 23152(b) (driving with a BAC over .08) with an enhancement
23 under section 23578 (BAC .15 or above) (.21), a misdemeanor.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Criminal conviction)**

26 8. Respondent is subject to disciplinary action under section 4301 (1) in that he has been
27 convicted of a crime which is substantially related to the qualifications, functions, and duties of a
28 registered pharmacy technician on or about January 24, 2012 in the case of *People of the State of*

1 *California v. Michael Maxwell Casey*, Sacramento County Superior Court case no. 11T06524, he
2 was convicted after his plea of Nolo Contendere of one count of violating Vehicle Code section
3 23152(b)(driving with an BAC over .08) The circumstances are as follows:

4 9. On December 9, 2011, respondent was arrested after witness reported a drunk driver
5 in the drive-thru lane of a Jack-in-the-Box restaurant across the street from the Sacramento Police
6 Department. When contacted, respondent had an open beer in the center console of his vehicle,
7 refused to cooperate by completing field sobriety tests, and subsequently submitted breath tests
8 registering .25 BAC.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Multiple convictions involving consumption of alcoholic beverage)

11 10. Respondent is subject to disciplinary action under section 4301 (k) in that he has been
12 convicted of more than one misdemeanor involving the consumption of alcohol as set forth in
13 paragraphs 5 and 6 above.

14 **THIRD CAUSE FOR DISCIPLINE**

15 (Dangerous or injurious use of alcohol)

16 11. Respondent is subject to disciplinary action under section 4301(h) in that he has used
17 alcohol to the extent or in a manner as to be dangerous or injurious to himself or to the public as
18 set forth in paragraphs 5 and 6 above.

19 **PRAYER**

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

22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 95782,
23 issued to Michael M. Casey

24 2. Ordering Michael M. Casey to pay the Board of Pharmacy the reasonable costs of the
25 investigation and enforcement of this case, pursuant to Business and Professions Code section
26 125.3;

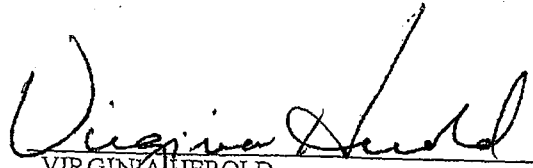
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3. Taking such other and further action as deemed necessary and proper.

DATED: 12/14/12



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

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