



California State Board of Pharmacy
 1625 N. Market Blvd, N219, Sacramento, CA 95834
 Phone: (916) 574-7900
 Fax: (916) 574-8618
 www.pharmacy.ca.gov

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>Jacob Gonzalez</u>	Case No. <u>4514</u>
Address of Record: _____	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 4514, I hereby request to surrender my pharmacy technician license, License No. 114244. 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.

Jacob Gonzalez
 Applicant's Signature

9/19/14
 Date

D. Hewitt
 Executive Officer's Approval

9/25/14
 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**

<p>In the Matter of the Accusation Against:</p> <p>JACOB GUILLERMO GONZALEZ,</p> <p>Pharmacy Technician Registration No. TCH 114244,</p> <p style="text-align:center">Respondent.</p>	<p>Case No. 4514</p> <p>OAH No. 2013050522</p>
--	--

FINAL DECISION AFTER REJECTION OF PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 26, 2013, in Oakland, California.

Jonathan D. Cooper, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Jacob Guillermo Gonzalez was present and represented himself.

Submission of the case was deferred to allow respondent to submit additional rehabilitation evidence. On October 25, 2013, respondent timely submitted a one-page Participant Progress Report, dated October 10, 2013, which was marked for identification as Exhibit A. Complainant was given until November 8, 2013, to submit a written response to respondent's evidence. Complainant did not submit a response, and Exhibit A was admitted into evidence.

The record closed and the matter was submitted for decision on November 8, 2013.

The proposed decision of the Administrative Law Judge was submitted to the Board of Pharmacy ("Board") on December 6, 2013. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on February 3, 2014 issued an Order of Non-adoption of Proposed Decision, and subsequently on March 17, 2014 issued an Order Fixing Date for Submission of Argument. Written argument having been timely received from complainant and respondent, and the time for filing written argument in this matter having

expired, and the entire record, including the transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. Virginia Herold (complainant) brought the Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On August 26, 2011, the Board issued Pharmacy Technician Registration No. TCH 114244 to respondent Jacob Guillermo Gonzalez. The Pharmacy Technician Registration was in full force and effect at all times relevant to this matter and will expire on June 30, 2015, unless renewed.

Criminal convictions

3. On August 21, 2012, in the Alameda County Superior Court, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of .08 percent or higher), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years. The terms of his probation include serving five days in jail through the Sheriff's work program, attending a nine-month driving under the influence (DUI) program, and paying of fines and fees.

The facts and circumstances surrounding this conviction are that on April 1, 2012, at about 2:00 a.m., a police officer observed that respondent's car was stopped at the bottom a freeway off-ramp. The police officer observed that respondent was slumped in the driver's seat of his car with the motor running. Respondent exhibited objective signs of intoxication, and his blood alcohol level was .20 percent.

4. On September 25, 2012, in the Alameda County Superior Court, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of .08 percent or higher), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years. The terms of his probation include serving two days in jail through the Sheriff's work program, attending a three-month DUI program, and paying fines and fees.

The facts and circumstances surrounding this conviction are that on December 1, 2011, at about 1:30 a.m., respondent was stopped by a police officer after his car stopped three-feet into a crosswalk. Respondent exhibited objective signs of intoxication, and his blood alcohol level was .17 percent.

Duties of pharmacy technician

5. The duties of a pharmacy technician include preparing medications to be dispensed to patients. Board Inspector Ijeona Elezu testified to the importance that licensees perform their duties free from chemical impairment. According to Inspector Elezu, there is always the possibility that a technician will make an error in preparing prescriptions. If a pharmacy technician is under the influence of alcohol or drugs on the job and therefore not cognizant of what he is doing, there is an increased risk that medications will be improperly dispensed to patients.

Respondent's evidence

6. Respondent takes responsibility for his actions. He realizes that he used extremely poor judgment when he drove his car while he was under the influence of alcohol. Respondent has complied with his probation conditions, including payment of his fines and fees.

7. For the last six months, respondent has participated in an 18-month DUI program.¹ The DUI program includes substance abuse education, group counseling and individual counseling. Through his participation in this program, respondent realized that he had a drinking problem. As a result, respondent has decreased his consumption of alcohol, and he thinks ahead regarding the consequences of his actions.

8. Respondent is 25 years old and lives with his parents. Respondent is currently employed as a pharmacy technician at the Medical Plan Pharmacy in Palo Alto. He has held this position since February 2013. Respondent enjoys his work, and he is willing to do whatever it takes to retain his registration.

9. Respondent's testimony was credible and candid in all respects.

Cost Recovery

10. Complaint has incurred Attorney General costs in the amount of \$6,482.50 in its investigation and enforcement of this matter. These costs breakdown as follows:

Paralegal Costs	48.00 hours @ \$120/hour	\$5,760.00
Attorney Costs	4.25 hours @ \$170/hour	\$ 722.00

The paralegal costs of \$5,760 are excessive in light of the fact that this case involves two simple DUI convictions. At hearing, counsel for complainant represented that the costs were so high because a paralegal prepared the pleadings. Counsel represented that if he had prepared the pleadings that the costs would have been \$2,500 and \$3,000. Based upon counsel's representations, the Attorney General costs are reduced to \$3,000, and on that basis, are found to be reasonable.

11. The evidence established that payment of a substantial cost award would

¹ Although respondent's probation conditions do not require an 18-month program, respondent enrolled in this program in order to obtain an unrestricted driver's license from the Department of Motor Vehicles.

constitute a financial hardship for respondent.

LEGAL CONSLUSIONS

1. Business and Professions Code section 4301 provides that the Board shall take disciplinary action against a licensee for unprofessional conduct, which includes convictions for substantially related crimes, the use of alcohol in a dangerous manner, and the conviction of more than one misdemeanor involving the use of alcohol. (Bus. & Prof. Code, § 4301, subs. (l), (h), & (k). As set forth below, complainant seeks to discipline respondent on each of these grounds.

Substantially related criminal convictions

2. Business and Professions Code sections 490 and 4301, subdivision (l), provide that the board shall take disciplinary action against a licensee who has been convicted of a crime that is substantially related to the qualifications, functions or duties of a pharmacy technician. A crime is substantially related to the qualifications, functions or duties of a pharmacy technician "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." (Cal.Code Regs., tit. 16 § 1770). As Inspector Elezu emphasized, in order to ensure that prescriptions are correctly prepared, it is critical that pharmacy technicians perform their duties free from chemical or alcohol impairment. Respondent's two DUI convictions, which occurred within a short time span and involved levels of intoxication over twice the legal limit, are substantially related convictions in that they raise concerns regarding respondent's fitness to safely perform his job duties. Accordingly, based upon the matters set forth in Factual Findings 3 through 5, cause for discipline exists under Business and Professions Code sections 490 and 4301, subdivision (l).

Dangerous use of alcohol

3. Pursuant to Business and Professions Code section 4301, subdivision (h), the Board shall take disciplinary action against a licensee who has used alcoholic beverages to an extent or in a manner dangerous to himself or the public. Based upon the matters set forth in Factual Findings 3 and 4, cause for discipline exists under this section.

Alcohol related convictions

4. Pursuant to Business and Professions Code section 4301, subdivision (k), the Board shall take disciplinary action against a licensee who has more than one criminal conviction involving the use of alcohol. Based upon the matters set forth in Factual Findings 3 and 4, cause for discipline exists under this section.

Disciplinary Determination

5. In determining the appropriate discipline, public safety is the board's paramount concern. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his

misconduct to the extent that he can be trusted to practice as a pharmacy technician in a manner consistent with public safety. Although respondent's DUI convictions are relatively recent, his convictions motivated him to come to terms with his drinking problem. As a result of what he has learned through his participation in the DUI program, he has decreased his use of alcohol to the point that he no longer believes that he is a problem drinker. Respondent is genuinely committed to leading a law-abiding and productive life. He has complied with the conditions of his criminal probation. He is a young man who values his work as a pharmacy technician, and is willing to do whatever it takes to maintain his registration. No evidence was presented to indicate that respondent has ever been under the influence while working as a pharmacy technician.

Based upon the evidence presented, it is determined that public safety will not be imperiled if respondent continues working as a pharmacy technician. In light of the recency of respondent's offenses and the fact that he remains on criminal probation, however, it is appropriate that respondent's technician registration be conditioned on his satisfactory completion of the probationary terms set forth below. Insofar as respondent is already participating in a DUI program, which will continue for about one year, it is not necessary to require him to attend an additional DUI education program as a condition of his probation to the Board.

Cost Recovery

6. Business and Professions Code section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the cause." In determining the reasonableness of the Board's costs, the following factors have been considered: whether respondent succeeded in getting the charges dismissed or the severity of discipline reduced, whether respondent presented a "colorable challenge" to the proposed discipline, whether respondent possessed a "subjective good faith belief" in the merits of his position, and whether respondent is financially able to pay such costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Additionally, under *Zuckerman*, the Board must not assess full enforcement costs when to do so would penalize an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*)

In the instant case, respondent did not contest his convictions. Instead, he used the hearing process to submit evidence demonstrating that revocation of his license would not be warranted in light of his rehabilitation. He also presented evidence that he is financially unable to pay a substantial cost reward. In consideration of these factors, it is determined the Board's costs should be reduced by about one-half, to a total of \$1,500.

ORDER

Pharmacy Technician Registration No. TCH 114244, issued to respondent Jacob Guillermo Gonzalez, is revoked; however, revocation is stayed, and respondent is placed on probation for three (3) 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 the 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:

- a. 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.
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- c. a conviction of any crime.
- d. 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. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his 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 the decision in case number 4514 (OAH 2013050522) 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 4514 (OAH 2013050522) 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 the decision in case number 4514 (OAH 2013050522) 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 4514 (OAH 2013050522) 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. 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 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 drug 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 or she 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.

8. 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.

9. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g. Alcoholics Anonymous, Narcotics Anonymous, etc.) that 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.

10. 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.

11. Status of License

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

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

12. 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 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.

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

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

address, or phone number.

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

14. 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 specific number of hours per calendar month to be determined by the Board or its designee. 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 in California for the specific minimum number of hours per calendar month determined by the Board, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

"Resumption of work" means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions Code section 4115 for at least the minimum number of hours determined by the board.

15. Violation of Probation

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

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be

heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation

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

17. Reimbursement of Board Costs

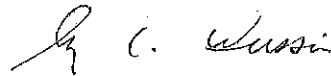
As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$1,500. Respondent shall make payments as arranged with the Board. There shall be no deviation from the payment schedule as arranged with the board absent prior written approval by the Board or its designee. Failure to pay costs by the deadline 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.

This decision shall become effective on July 3, 2014.

It is so ORDERED on June 3, 2014.

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:

JACOB GUILLERMO GONZALEZ

Pharmacy Technician Registration No.
TCH 114244

Respondent.

Case No. 4514

OAH No. 2013050522

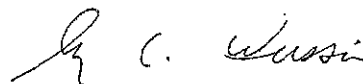
TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

ORDER FIXING DATE FOR SUBMISSION OF ARGUMENT

The transcript of the hearing in the above-entitled matter having now become available, the parties are hereby notified of the opportunity to submit written arguments in accordance with the Non-Adopt dated February 3, 2014. In addition to any arguments the parties may wish to submit, the board is interested in argument directed at the following issue: If cause for discipline exists, what penalty, if any, should be applied in this case.

Pursuant to said Order written argument shall be filed with the Board of Pharmacy, 1625 N. Market Blvd, Suite N-219, Sacramento, California, on or before April 16, 2014. **No new evidence may be submitted.**

IT IS SO ORDERD this 17th day of March, 2014.



STAN C. WEISSER
President, Board of Pharmacy
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

JACOB GUILLERMO GONZALEZ
TCH 114244

Respondent.

Case No. 4514

OAH No. 2013050522

TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:

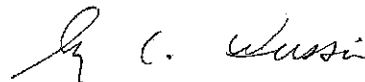
ORDER OF NONADOPTION OF PROPOSED DECISION

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. 4514. 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 ORDERED this 3rd day of February, 2014.

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:

JACOB GUILLERMO GONZALEZ,

Pharmacy Technician Registration
No. TCH 114244,

Respondent.

Case No. 4514

OAH No. 2013050522

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on September 26, 2013, in Oakland, California.

Jonathan D. Cooper, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Respondent Jacob Guillermo Gonzalez was present and represented himself.

Submission of the case was deferred to allow respondent to submit additional rehabilitation evidence. On October 25, 2013, respondent timely submitted a one-page Participant Progress Report, dated October 10, 2013, which was marked for identification as Exhibit A. Complainant was given until November 8, 2013, to submit a written response to respondent's evidence. Complainant did not submit a response, and Exhibit A was admitted into evidence.

The record closed and the matter was submitted for decision on November 8, 2013.

FACTUAL FINDINGS

1. Virginia Herold (complainant) brought the Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs.
2. On August 26, 2011, the Board issued Pharmacy Technician Registration No. TCH 114244 to respondent Jacob Guillermo Gonzalez. The Pharmacy Technician

Registration was in full force and effect at all times relevant to this matter and will expire on June 30, 2015, unless renewed.

Criminal convictions

3. On August 21, 2012, in the Alameda County Superior Court, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of .08 percent or higher), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years. The terms of his probation include serving five days in jail through the Sheriff's work program, attending a nine-month driving under the influence (DUI) program, and paying of fines and fees.

The facts and circumstances surrounding this conviction are that on April 1, 2012, at about 2:00 a.m., a police officer observed that respondent's car was stopped at the bottom a freeway off-ramp. The police officer observed that respondent was slumped in the driver's seat of his car with the motor running. Respondent exhibited objective signs of intoxication, and his blood alcohol level was .20 percent.

4. On September 25, 2012, in the Alameda County Superior Court, respondent was convicted, on his plea of no contest, of violating Vehicle Code section 23152, subdivision (b) (driving under the influence of alcohol with a blood alcohol content of .08 percent or higher), a misdemeanor. Imposition of sentence was suspended, and respondent was placed on court probation for a period of three years. The terms of his probation include serving two days in jail through the Sheriff's work program, attending a three-month DUI program, and paying fines and fees.

The facts and circumstances surrounding this conviction are that on December 1, 2011, at about 1:30 a.m., respondent was stopped by a police officer after his car stopped three-feet into a crosswalk. Respondent exhibited objective signs of intoxication, and his blood alcohol level was .17 percent.

Duties of pharmacy technician

5. The duties of a pharmacy technician include preparing medications to be dispensed to patients. Board Inspector Ijeona Elezu testified to the importance that licensees perform their duties free from chemical impairment. According to Inspector Elezu, there is always the possibility that a technician will make an error in preparing prescriptions. If a pharmacy technician is under the influence of alcohol or drugs on the job and therefore not cognizant of what he is doing, there is an increased risk that medications will be improperly dispensed to patients.

Respondent's evidence

6. Respondent takes responsibility for his actions. He realizes that he used extremely poor judgment when he drove his car while he was under the influence of alcohol. Respondent has complied with his probation conditions, including payment of his fines and fees.

7. For the last six months respondent has participated in an 18-month DUI program.¹ The DUI program includes substance abuse education, group counseling and individual counseling. Through his participation in this program, respondent realized that he had a drinking problem. As a result, respondent has decreased his consumption of alcohol, and he thinks ahead regarding the consequences of his actions.

8. Respondent is 25 years old and lives with his parents. Respondent is currently employed as a pharmacy technician at the Medical Plan Pharmacy in Palo Alto. He has held this position since February 2013. Respondent enjoys his work, and he is willing to do whatever it takes to retain his registration.

9. Respondent's testimony was credible and candid in all respects.

Cost Recovery

10. Complainant has incurred Attorney General costs in the amount of \$6,482.50 in its investigation and enforcement of this matter. These costs breakdown as follows:

Paralegal Costs	48.00 hours @ \$120/hour	\$5,760.00
Attorney Costs	4.25 hours @ \$170/hour	\$ 722.50

The paralegal costs of \$5,760 are excessive in light of the fact that this case involves two simple DUI convictions. At hearing, counsel for complainant represented that the costs were so high because a paralegal prepared the pleadings. Counsel represented that if he had prepared the pleadings that the costs would have been between \$2,500 and \$3,000. Based upon counsel's representations, the Attorney General costs are reduced to \$3,000, and on that basis, are found to be reasonable.

11. The evidence established that payment of a substantial cost award would constitute a financial hardship for respondent.

¹ Although respondent's probation conditions do not require an 18-month program, respondent enrolled in this program in order to obtain an unrestricted driver's license from the Department of Motor Vehicles.

rehabilitated from his misconduct to the extent that he can be trusted to practice as a pharmacy technician in a manner consistent with public safety. Although respondent's DUI convictions are relatively recent, his convictions motivated him to come to terms with his drinking problem. As a result of what he has learned through his participation in the DUI program, he has decreased his use of alcohol to the point that he no longer believes that he is a problem drinker. Respondent is genuinely committed to leading a law-abiding and productive life. He has complied with the conditions of his criminal probation. He is a young man who values his work as a pharmacy technician, and is willing to do whatever it takes to maintain his registration. No evidence was presented to indicate that respondent has ever been under the influence while working as a pharmacy technician.

Based upon the evidence presented, it is determined that public safety will not be imperiled if respondent continues working as a pharmacy technician. In light of the recency of respondent's offenses and the fact that he remains on criminal probation, however, it is appropriate that respondent's technician registration be conditioned on his satisfaction completion of the probationary terms set forth below. Insofar as respondent is already participating in a DUI program, which will continue for about one year, it is not necessary to require him to attend an additional DUI education program as a condition of his probation to the board.

Cost Recovery

6. Business and Professions Code section 125.3 provides that a licensee found to have violated licensing laws may be ordered to pay the board "a sum not to exceed the reasonable costs of the investigation and enforcement of the cause." In determining the reasonableness of the board's costs, the following factors have been considered: whether respondent succeeded in getting the charges dismissed or the severity of discipline reduced, whether respondent presented a "colorable challenge" to the proposed discipline, whether respondent possessed a "subjective good faith belief" in the merits of her position, and whether respondent is financially able to pay such costs. (*Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45.) Additionally, under *Zuckerman*, the board must not assess full enforcement costs when to do so would penalize an individual who has committed some misconduct, but who has used the hearing process to reduce the severity of the discipline imposed. (*Ibid.*)

In the instant case, respondent did not contest his convictions. Instead, he used the hearing process to submit evidence demonstrating that revocation of his license would not be warranted in light of his rehabilitation. He also presented evidence that he is financially unable to pay a substantial cost reward. In consideration of these factors, it is determined the board's costs should be reduced by about one-half, to a total of \$1,500.

ORDER

Pharmacy Technician Registration No. TCH 114244, issued to respondent Jacob Guillermo Gonzalez, is revoked; however, revocation is stayed, and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- a. 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.
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment.
- c. a conviction of any crime.
- d. 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.

2. Report to the Board

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

3. Interview with the Board

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

4. Cooperate with Board Staff

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

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4514 (OAH 2013050522) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his or her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4514 (OAH 2013050522) and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4514 (OAH 2013050522) in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4514 (OAH 2013050522) and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

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

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service

as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

6. Probation Monitoring Costs

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

7. Status of License

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

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

8. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his or her pharmacy technician license to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

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

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

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

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

10. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a specific number of hours per calendar month to be determined by the board or its designee. 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 in California for the specific minimum number of hours per calendar month determined by the board, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

“Cessation of work” means calendar month during which respondent is not working as a pharmacy technician, as defined in Business and Professions Code section 4115 for at least the minimum hours determined by the board. “Resumption of work” means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions Code section 4115 for at least the minimum number of hours determined by the board.

11. Violation of Probation

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

to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

12. Completion of Probation

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

13. 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 \$1,500. Respondent shall make payments as arranged with the board. There shall be no deviation from the payment schedule as arranged with the board absent prior written approval by the board or its designee. Failure to pay costs by the deadline 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.

DATED: December 6, 2013



DIANE SCHNEIDER

Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 State Bar No. 91740
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5556
5 Facsimile: (415) 703-5480
Attorneys for Complainant

6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Accusation Against:

Case No. 4514

11 **JACOB GUILLERMO GONZALEZ**
12 **1995 Bamboo Court**
Hayward, CA 94545

A C C U S A T I O N

13 **Pharmacy Technician Registration No.**
TCH 114244

14 Respondent.

15
16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about August 26, 2011, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 114244 to Jacob Guillermo Gonzalez (Respondent). The Pharmacy
23 Technician Registration was in full force and effect at all times relevant to the charges brought
24 herein and will expire on June 30, 2013, unless renewed.

25 **JURISDICTION**

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

1 4. Section 490 of the Business and Professions Code, in pertinent part, states:

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

6 . . .

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

13 . . .

14 5. Section 493 of the Business and Professions Code states:

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

24 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
25 'registration.'"

26 6. Section 4300 of the Business and Professions Code, in pertinent part, provides that
27 every license issued by the Board may be suspended or revoked and provides that the Board shall
28

1 discipline a licensee whose default has been entered or whose case has been heard by the board
2 and found guilty, by any of the following methods:

3 "(1) Suspending judgment.

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

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

6 "(4) Revoking his or her license.

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

9 . . .

10 7. Section 4301 of the Business and Professions Code, in pertinent part, states:

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

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

14 . . .

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

20 . . .

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

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

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

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

18 FIRST CAUSE FOR DISCIPLINE

19 (Unprofessional Conduct - Conviction of a Crime)

20 9. Respondent is subject to disciplinary action under Business and Professions Code
21 section 4301(l) for unprofessional conduct in that he was convicted of a crime substantially
22 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances
23 surrounding this conviction are as follows:

24 a. On or about August 21, 2012, in Alameda County Superior Court Case No. 441967
25 entitled People of the State of California v. Jacob Guillermo Gonzalez respondent was convicted
26 by his plea of no contest to violating Vehicle Code section 23152(b) for driving with a blood
27 alcohol level of 0.08 percent or higher with a special enhancement for a Blood Alcohol
28 Concentration (BAC) over 0.15%, a misdemeanor.

1 related to the qualifications, functions, and duties of a pharmacy technician. The circumstances
2 surrounding this conviction are as follows:

3 a. On or about September 25, 2012, in Alameda County Superior Court Case No.
4 439491 entitled People of the State of California v. Jacob Guillermo Gonzalez respondent was
5 convicted by his plea of no contest to violating Vehicle Code section 23152(b) for driving with a
6 blood alcohol level of 0.08 percent or higher, a misdemeanor.

7 b. On or about December 1, 2011, at approximately 0115 hours California Highway
8 Patrol officers conducted an enforcement stop in Alameda County after they observed respondent
9 stop his vehicle past the stop limit line approximately three feet into the bicycle lane. Upon
10 making contact with respondent the one of the officers could smell the odor of an alcoholic
11 beverage emitting from the interior of the vehicle, as well as from respondent's breath and person.
12 The officer also noticed that the respondent's eyes were red and watery and his speech was
13 slurred. The Respondent told the officer that he had consumed three beers earlier in the evening.

14 The officer administered a series of Field Sobriety Tests (FSTs), which respondent failed to
15 perform as explained and demonstrated. Also, respondent submitted to a Preliminary Alcohol
16 Screening (PAS) Test, which resulted in a Blood Alcohol Concentration (BAC) of 0.151% at
17 0130 hours and 0.144% at 0132 hours. Based on respondent's driving ability, his objective
18 symptoms of intoxication, his performance on the FSTs and his results on the PAS test, the
19 officer formed the opinion that respondent was driving while under the influence of an alcoholic
20 beverage. Respondent was subsequently arrested and transported to the county jail where he
21 submitted to a blood test. Respondent was booked into the county jail for violating Vehicle Code
22 section 23152(a) – DUI Alcohol/Drugs, a misdemeanor. Respondent's blood test reported a BAC
23 of 0.17%.

24 c. On or about September 25, 2012, the respondent was placed on court probation for
25 three years and was ordered to enroll and complete a three month Driving Under the Influence
26 School, ordered to serve two days in the county jail, and ordered to pay fines and fees totaling
27 \$1,961.00.

28 / / /

1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct- Use of Alcohol in a dangerous manner)

3 11. Respondent is subject to disciplinary action under Business and Professions Code
4 section 4301(h) for unprofessional conduct in that on December 1, 2011 and on April 1, 2012 he
5 used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to any other
6 person or to the public, as set forth in paragraphs 9 and 10, above.

7 FOURTH CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct - Alcohol Related Conviction)

9 12. Respondent is subject to disciplinary action under Business and Professions Code
10 section 4301(k) for unprofessional conduct in that on August 21, 2012 and on September 25,
11 2012, he was convicted of one or more misdemeanors involving the use of alcoholic beverages, as
12 set forth in paragraphs 9 and 10, above.

13 PRAYER

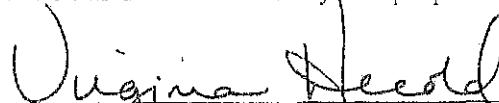
14 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
15 and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician Registration Number TCH 114244,
17 issued to Jacob Guillermo Gonzalez;

18 2. Ordering Jacob Guillermo Gonzalez to pay the Board of Pharmacy the reasonable
19 costs of the investigation and enforcement of this case, pursuant to Business and Professions
20 Code section 125.3;

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

22 DATED: 3/21/13

23 

24 VIRGINIA HEROLD
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

SF2012403511
40629486.doc