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

In the Matter of the Accusation Against:

Case No. 4564

**MARLON GIOVANNI LOBO** 

12947 Downey Ave. Downey, CA 90242

Pharmacy Technician Registration No. TCH 58270

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order for Public Reproval is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on April 8, 2015.

It is so ORDERED on April 1, 2015.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Ву

STAN C. WEISSER Board President April 1, 2015

Marlon Giovanni Lobo 12947 Downey Ave. Downey, CA 90242

www.pharmacy.ca.gov

Re:

LETTER OF PUBLIC REPROVAL

In the Matter of the Accusation Against:

Marlon Giovanni Lobo Pharmacy Technician License No. 58270

Dear Mr. Lobo:

On November 4, 2013, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Pharmacy Technician License. The Accusation alleged that on or around May 15, 2012 you were convicted of a substantially related crime in violation of Business and Professions Code section 4301, subdivision (1), when you drove a vehicle driving while having 0.08% or more, by weight, of alcohol in your blood.

Taking into consideration certain mitigating factors, including the length of time you have practiced as a pharmacy technician without incident, the fact that the allegations in this case are limited to a single incident, in addition to other mitigating circumstances in this case that support the determination that you are safe to practice as a pharmacy technician, the Board has decided that the charges warrant a public reproval.

Accordingly, in resolution of this matter, under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproval.

Sincerely,

VIRGINIA HEROLD

Executive Officer

Board of Pharmacy

Department of Consumer Affairs

	, l							
1	KAMALA D. HARRIS							
2								
3	Supervising Deputy Attorney General KRITHTHIKA VASUDEVAN							
4	Deputy Attorney General State Bar No. 247590							
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013							
6	Telephone: (213) 897-2540 Facsimile: (213) 897-2804							
7	Attorneys for Complainant							
8	BEFORE THE							
9	BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA							
10	STATE OF C	LALIFURNIA						
ì	In the Matter of the Accusation Against:	Case No. 4564						
11	MARLON GIOVANNI LOBO	·						
12	12947 Downey Ave. Downey, CA 90242	STIPULATED SETTLEMENT AND DISCIPLINARY ORDER						
13	Pharmacy Technician Registration							
14	No. TCH 58270							
15	Respondent.	:						
16								
17	IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-							
18	entitled proceedings that the following matters as	re true:						
19	<u>PARTIES</u>							
20	1. Virginia Herold ("Complainant") is t	he Executive Officer of the Board of Pharmacy						
21	(Board). She brought this action solely in her official capacity and is represented in this matter by							
22	Kamala D. Harris, Attorney General of the State of California, by Kriththika Vasudevan, Deputy							
23	Attorney General.							
24	2. On or about September 10, 2004, the Board of Pharmacy issued Pharmacy Technician							
25	Registration No. TCH 58270 to Marlon Giovanni Lobo (Respondent). The Pharmacy Technician							
26	Registration was in full force and effect all times relevant to the charges brought in Accusation							
27	No. 4564 and will expire on February 29, 2016, unless renewed.							
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STIPULATED SETTLEMENT (4564)

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#### **JURISDICTION**

- 3. Accusation No. 4564 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on May 21, 2014. Respondent timely filed his Notice of Defense contesting the Accusation.
- 4. A copy of Accusation No. 4564 is attached as exhibit A and incorporated herein by reference.

#### ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 4564.
- 6. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.
- 7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

#### **CULPABILITY**

- 9 Respondent admits the truth of each and every charge and allegation in Accusation No. 4564.
- 10. Respondent agrees that his Pharmacy Technician License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

#### **CONTINGENCY**

- 11. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

#### **DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Pharmacy Technician License No. 58270 issued to Respondent shall, by way of letter from the Board's Executive Officer, be publicly reproved. The letter shall be in the same form as the letter attached as Exhibit B to this stipulation.

IT IS FURTHER ORDERED that Respondent shall pay \$4,302.00 to the Board for its costs associated with the investigation and enforcement of this matter. Respondent shall be

1	permitted to pay these costs in a payment plan approved by the Board. Respondent has 18				
2	months from the effective date of this decision to pay the costs. If Respondent fails to pay the				
3	Board costs, Respondent shall not be allowed to renew his Pharmacy Technician License.				
4 {	ACCEPTANCE				
5	I have carefully read the above Stipulated Settlement and Disciplinary Order. I understand				
6	the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into				
7	this Stipulated Settlment and Disciplinary Order voluntarily, knowingly, and intelligently, and				
8	agree to be bound by the Decision and Order of the Board of Pharmacy.				
9					
0	DATED: 36/5				
1	MARLON GIOVANNI LOBO Respondent				
2					
3	ENDORSEMENT				
4	The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully				
5	submitted for consideration by the Board of Pharmacy.				
6	7/11				
7	Dated: 3/6/16 Respectfully submitted,				
8	KAMALA D. HARRIS Attorney General of California				
9	ARMANDO ZAMBRANO Supervising Deputy Attorney General				
0	An sediction				
21	Kriththika Vasudevan				
22	Deputy Attorney General Attorneys for Complainant				
23					
24					
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27					
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Exhibit A

Accusation No. 4564

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1.	KAMALA D. HARRIS					
2	Attorney General of California ARMANDO ZAMBRANO		•	. •		
3	Supervising Deputy Attorney General KRITHTHIKA VASUDEVAN					
4	Deputy Attorney General State Bar No. 247590	•				
5	300 So. Spring Street, Suite 1702 Los Angeles, CA 90013	·	•			
	Telephone: (213) 897-2540					
6	Facsimile: (213) 897-2804		•			
7	Attorneys for Complainant					
8	BEFORE THE BOARD OF PHARMACY					
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA					
10	SIAIE OF	CALIFORNIA				
11	In the Matter of the Accusation Against:	Case No. 4564				
12	MARLON GIOVANNI LOBO	ACCUSATION				
13	2585 Ohio Avenue South Gate, CA 90280					
14	Pharmacy Technician Registration					
15	No. TCH 58270		2			
16	Respondent.					
17		•				
18	Complainant alleges:	•	· · · .			
19	PARTIES					
20		· ·	n her official c	onocits		
	1. Virginia Herold (Complainant) brings this Accusation solely in her official capacit					
21	as the Executive Officer of the Board of Pharma	-				
22	2. On or about September 10, 2004, the Board of Pharmacy issued Pharmacy Technician					
23	Registration No. TCH 58270 to Marlon Giovanni Lobo (Respondent). The Pharmacy Technician					
24	Registration was in full force and effect at all times relevant to the charges brought herein an					
25	will expire on February 28, 2014, unless renewed.					
26	<u>JURISDICTION</u>					
27	3. This Accusation is brought before the Board under the authority of the followin					
28	laws. All section references are to the Business and Professions Code unless otherwise indicated			icated.		
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#### **STATUTORY PROVISIONS**

- 4. Section 118, subdivision (b) provides, in pertinent part that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
  - 5. Section 490 states, in pertinent part:
- "(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- "(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code."
- 6. Section 4300 provides in pertinent part, that every license issued by the Board is subject to discipline, including suspension or revocation.
- 7. Section 4300.1 provides in pertinent part, "[T]he expiration, cancellation, forfeiture, or suspension of a board-issued license by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license."
  - 8. Section 4301 states, in pertinent part:

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

. . . .

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

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- "(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drugs or alcoholic beverage, or any combination of those substances.
- "(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment."

## REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

#### COST RECOVERY

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

## FIRST CAUSE FOR DISCIPLINE

# (Convictions of Substantially Related Crimes)

- 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, as follows:
- a. On or about May 15, 2012, after pleading nolo contendere, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of California v. Marlon Giovani Lobo* (Super. Ct. Los Angeles County, 2012, No. 2EA02177). The Court sentenced Respondent to serve 120 days in Los Angeles County Jail and placed him on five (5) years of summary probation, ordered him to finish an eighteen month alcohol program, and ordered him to pay fines.

b. The circumstances surrounding the conviction are that on or about February 28, 2012, a California Highway Patrol officer spotted Respondent driving his car at a high rate of speed. The officer conducted a traffic stop and asked Respondent and his two (2) passengers to exit the car. While speaking to Respondent, the officer detected a strong odor of an alcoholic beverage emitting from his breath and person. When asked if he had consumed any alcoholic beverages, Respondent stated that he had been drinking beer all day long. Respondent was observed to have slurred, slow, mumbled speech, and red, watery eyes. While at the scene, Respondent submitted to a Preliminary Screening Test (PAS) that resulted in a breath-alcohol level of 0.08% on the first reading and 0.09% on the second.

# SECOND CAUSE FOR DISCIPLINE

#### (Dangerous Use of Alcohol)

12. Respondent is subject to disciplinary action under section 4301, subdivision (h), in that on or about February 28, 2012, Respondent used alcoholic beverage to an extent or in a manner dangerous or injurious to himself, another person, or the public, when he operated a vehicle while having 0.08% or more of alcohol in his blood. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, subdivisions (a) and (b) as though set forth fully.

#### THIRD CAUSE FOR DISCIPLINE

# (Convictions Involving the Consumption of Alcohol)

13. Respondent is subject to disciplinary action under section 4301, subdivision (k), in that on or about August 26, 2003, December 5, 2006, and May 15, 2012, Respondent was convicted of crimes involving the consumption of alcohol. Complainant refers to, and by this reference incorporates allegations set forth in paragraph 11, subdivision (a) and 14, subdivision (a) and (d), inclusive, as though set forth fully.

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## DISCIPLINE CONSIDERATIONS

- 14. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges, as follows:
- a. On or about December 5, 2006, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601.1, subdivision (a) [driving while driver's license is suspended or revoked] and one misdemeanor count of violating Vehicle Code 23152, subdivision (b) [driving while having 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People of the State of California v. Marlon Giovani Lobo* (Super. Ct. Los Angeles County, 2003, No. 6DW07035). The court sentenced Respondent to serve 1 day in Los Angeles county Jail and placed him on three (3) years summary probation, with terms and conditions.
- b. On or about November 22, 2006, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 14601., subdivision (a) [driving while driver's license is suspended or revoked] in the criminal proceeding entitled *The People of the State of California v. Marlon Giovani Lobo* (Super. Ct. Los Angeles County, 2006, No. 6BR03573. The court sentenced Respondent to serve 10 days in Los Angeles county Jail and placed him on three (3) years summary probation, with terms and conditions.
- c. On or about February 24, 2006, Respondent was convicted of one misdemeanor count of violating Penal Code section 594, subdivision (a) [vandalism] in the criminal proceeding entitled *The People of the State of California v. Marlon Giovani Lobo* (Super. Ct. Los Angeles County, 2006, No. 5DW08122). The court placed Respondent on two (2) years summary probation, with terms and conditions.
- d. On or about August 26, 2003, Respondent was convicted of one misdemeanor count of violating Vehicle Code section 20002, subdivision (a) [hit and run: property damage] and one misdemeanor count of violating Vehicle Code section 23103.5 [reckless driving involving alcohol] in the criminal proceeding entitled *The People of the State of California v. Marlon Giovani Lobo* (Super. Ct. Los Angeles County, 2003, No. 3DW04155). The court sentenced

Accusation

# Exhibit B

Letter of Public Reproval in Case No. 4564

Dat	te:	 	
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Marlon Giovanni Lobo 12947 Downey Ave. Downey, CA 90242

Re:

LETTER OF PUBLIC REPRIMAND In the Matter of the Accusation Against:

Marlon Giovanni Lobo Pharmacy Technician License No. 58270

Dear Mr. Lobo:

On November 4, 2013, the Board of Pharmacy, Department of Consumer Affairs, State of California, filed an Accusation against your Pharmacy Technician License. The Accusation alleged that on or around May 15, 2012 you were convicted of a substantially related crime in violation of Business and Professions Code section 4301, subdivision (1), when you drove a vehicle driving while having 0.08% or more, by weight, of alcohol in your blood.

Taking into consideration certain mitigating factors, including the length of time you have practiced as a pharmacy technician without incident, the fact that the allegations in this case are limited to a single incident, in addition to other mitigating circumstances in this case that support the determination that you are safe to practice as a pharmacy technician, the Board has decided that the charges warrant a public reproval.

Accordingly, in resolution of this matter, under the authority provided under Business and Professions Code section 495, the Board of Pharmacy, Department of Consumer Affairs issues this letter of public reproval.

Sincerely,

VIRGINIA HEROLD Executive Officer Board of Pharmacy Department of Consumer Affairs