

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

In the Matter of the Accusation Against:

Case No. 4706

CHENG C. SAECHAO
5020 Concord Rd.
Sacramento, CA 95820

OAH No. 2013080531

Pharmacy Technician Registration
No. TCH 93464

Respondent.

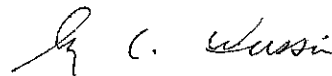
DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on August 11, 2014.

It is so ORDERED on July 11, 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:

CHENG C. SAECHAO

Pharmacy Technician
Registration No. TCH 93464

Respondent.

Case No. 4706

OAH No. 2013080531

PROPOSED DECISION

This matter was heard on May 27, 2014, before Ann Elizabeth Sarli, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), in Sacramento California.

Complainant, Virginia Herold, Executive Officer of the Board of Pharmacy, was represented by Kristina Jansen, Deputy Attorney General.

Cheng C. Saechao represented himself.

Oral and documentary evidence was submitted. The record was closed and the matter submitted for decision on May 27, 2014.

FACTUAL FINDINGS

1. On March 11, 2010, the Board of Pharmacy (Board) issued Pharmacy Technician Registration Number TCH 93464 to Cheng C. Saechao (respondent). The pharmacy technician registration was in full force and effect at all times relevant to this proceeding.
2. On July 22, 2013, Virginia Herold made the Accusation against respondent in her official capacity as Executive Officer of the Board, and caused it to be filed.
3. Respondent timely filed a Notice of Defense to the Accusation, pursuant to Government Code sections 11505 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an

independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Respondent's Background and Criminal Conviction

4. Respondent is 33 years old. He completed pharmacy technician training in June of 2009 at Lincoln Village School, now Anthem College. He worked at Broadway Pharmacy in Sacramento for a few months and was then laid off. He has not otherwise worked as a pharmacy technician.

5. Respondent has a problem with alcohol. On March 12, 2001, he was convicted of driving under the influence of alcohol in the Sacramento County Superior Court.¹ After this conviction he decided only to drink alcohol at home.

6. On July 13, 2001, respondent was drinking at home with his friends. He became extremely intoxicated and according to his wife he went "way overboard" and "blacked out." After respondent's friends left, at about 2:00 a.m., respondent pounded on the bedroom doors of his wife and his 15 and 16 year old stepsons, N. S. and J.S. and woke them up. Respondent and his wife had two small children who were also in the house at the time. Respondent was upset that the house needed cleaning and that his wife and stepsons did not respect him. He began yelling at them to clean up the house and made them clean the kitchen. Respondent then took a knife from the kitchen and held it against N.S.'s throat. Respondent's wife stepped in and intervened. Respondent then grabbed another knife and said he was going to kill N.S. in front of them. The knife nicked the boy's throat. Respondent then said he could kill any of them. He lowered the knife and began lecturing them. N.S. called the police and reported the incident. "No Contact/Restraining orders were issued against respondent. Children's Protective Services was called in to protect the children.

7. On December 11, 2012, respondent was convicted on his plea of nolo contendere of one count of violation of Penal Code section 422² (willfully and unlawfully

¹ Case number 01T00869.

² Penal Code section 422 provides in pertinent part:

- (a) Any person who willfully threatens to commit a crime which will result in death or great bodily injury to another person, with the specific intent that the statement, made verbally, in writing, or by means of an electronic communication device, is to be taken as a threat, even if there is no intent of actually carrying it out, which, on its face and under the circumstances in which it is made, is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat, and thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate

threaten to commit a crime which would result in death or great bodily injury with specific intent that the statement be taken as a threat), a misdemeanor. Respondent was ordered to serve 120 days in jail and to pay fines. He was placed on three years summary probation. His probationary term expires in December 2015.

Respondent's Rehabilitation Evidence

8. Prior to his plea, respondent's attorney and the district attorney agreed that respondent would plead guilty to one charge after he completed several programs and classes. He completed family drug court, 90 days in drug and alcohol treatment, 180 days in another drug and alcohol program and a parenting program. A Children's Protective Services social worker visits monthly.

9. Respondent testified that he still drinks alcohol, "a couple of beers about once a week" to "relax my mind" and he "cannot give this up...life is hard." He went to Alcoholics Anonymous about once a week for a while, but he has no sobriety date, no sponsor and has not worked any of the steps.

10. Respondent denied that he had placed a knife to his stepson's throat and testified that his son was lying. He testified that he "probably had a pencil" or something but there was no weapon involved. He explained that his stepson wanted him out of the house and made a false report to the police. "They all wanted me out of the house due to the drinking." Respondent's conviction stands as conclusive evidence of his guilt and he may not attempt to impeach his conviction in this forum. Moreover, he and his wife were not credible in their descriptions of the events of that evening. Respondent's wife testified he "blacked out" meaning "he forgot everything." She testified that she does not have a good memory. She testified that he did not hold a knife to her son's throat and then admitted she was picking up chairs and things respondent threw on the floor during much of the incident. She also testified that respondent did not touch his stepsons and then explained that they were "wrestling" around on the floor fighting and her son could have been scratched in the throat by a chair.

11. Respondent believes his case was "dismissed" because "it was not that serious." It was "not my intention of doing anything like that, things just happened." He then testified that he was working part time jobs and under a lot of stress at the time and "gave my family a hard time." This was a "mistake involving the family, not outside people."

//

family's safety, shall be punished by imprisonment in the county jail not to exceed one year, or by imprisonment in the state prison.

[¶...¶]

Discussion of Rehabilitation Evidence

12. Neither respondent nor his wife were credible witnesses to the events that gave rise to the conviction or to respondent's rehabilitation. The criminal conviction stands as conclusive proof that respondent threatened the life of his stepson while holding a knife to his throat. Respondent appears to have no real appreciation for the gravity of his offense or for the connection between his offense and the qualifications and duties of a pharmacy technician. A pharmacy technician must be sober and of even temperament. A person who becomes intoxicated, experiences "blackouts," and explodes into alcohol fueled fits of violence is manifestly unfit for licensure as a pharmacy technician.

13. Once cause for denial is proved, the applicant must produce persuasive evidence that he is rehabilitated and is a person of good character such that the license should issue, despite the existence of legal cause for denial. Rehabilitation is a "state of mind" and the law looks with favor upon one who has achieved "reformation and regeneration."³ Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation.⁴ A truer indication of rehabilitation is demonstrated by sustained conduct over an extended period of time.⁵ The significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct.⁶ "The more serious the misconduct and the bad character evidence, the stronger the applicant's showing of rehabilitation must be."⁷ Where serious or criminal misconduct was involved, positive inferences about the applicant's moral character are more difficult to draw and negative character inferences are stronger and more reasonable. Good conduct is expected of applicants under court or correctional scrutiny, and rehabilitation is thus generally measured from the time of completion and discharge from parole or probation.⁸ Persons on probation or parole, under the supervision of the court or correctional authorities, are expected to behave in an exemplary fashion. Therefore, little weight in terms of assessing rehabilitation is given to the fact that the applicant has not committed additional crimes or violated the terms and conditions of probation or parole.⁹

³ *Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.

⁴ *Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.

⁵ *In re Menna* (1995) 11 Cal.4th 975, 991.

⁶ *Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.

⁷ *In re Gossage* (2000) 23 Cal.4th 1080.

⁸ *Id.*

⁹ *In Re Gossage* (2000) 23 Cal.4th 1080, 1100, *In Re Manna* (1995) 11 Cal 4th 975, 988-989.

14. Respondent has shown only that he took classes required in connection with his plea bargain. He has not shown a positive change in his state of mind or acknowledged the severity of his offense. He continues to drink alcohol, despite the repercussions he has suffered from drinking. Respondent is still on probation for his offense and his home is still being monitored by Children's Protective Services. He has not shown significant rehabilitation in respect to his drinking and temperament and thus is not suited for licensure at this time.

Costs

15. Complaint established the reasonable costs of investigation and prosecution of this matter were \$1,742.50. Respondent works at a grocery store and his wife works at a Casino. They bring in between \$4,000 and \$5,000 a month and support four children. Accordingly, respondent may pay costs to the Board in an installment plan approved by the Board.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300 provides that the Board may suspend or revoke any certificate, license, permit, registration, or exemption, and may suspend the right to practice or place the licensee on probation.

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 583.) "Clear and convincing evidence" means evidence of such convincing force that it demonstrates, in contrast to the opposing evidence, a high probability of the truth of the facts for which it is offered as proof. "Clear and convincing evidence" is a higher standard of proof than proof by a "preponderance of the evidence." (*BAJI* 2.62.) "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189.)

3. Business and Professions Code section 4301, subdivision (1) provides that the Board shall take action against any holder of a license, who is guilty of unprofessional conduct, including:

The conviction of a crime substantially related to the qualifications, functions and duties of a licensee [] ... []

4. California Code of Regulations, title 16, section 1170 provides in pertinent part that an act shall be considered to be substantially related to the qualifications, functions, or duties of a licensee or registrant if to a substantial degree the act evidences a present or potential unfitness to perform the functions authorized by the license in a manner consistent with the public health, safety and welfare.

5. As set forth in the Findings, and pursuant to Legal Conclusions 3 and 4, it was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code section 4301, subdivision (i) for commission of a criminal act substantially related to the functions and duties of a pharmacy technician.

6. Business and Professions Code section 4301, subdivision (f) provides that the Board shall take action against any holder of a license, who is guilty of unprofessional conduct, including:

The commission of any act involving moral turpitude, dishonesty, fraud, deceit or corruption...

7. As set forth in the Findings, and pursuant to Legal Conclusion 6, it was established by clear and convincing evidence that respondent is subject to discipline under Business and Professions Code section 4301, subdivision (f) by committing an act of moral turpitude when he threatened to kill his stepson and held a knife to his throat.

8. As set forth in the Findings, respondent did not demonstrate that he is rehabilitated and can practice safely as a pharmacy technician.

Costs


9. Business and Professions Code section 125.3, provides that the Board may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. As set forth in Finding 15, respondent shall pay the Board \$1,742.50, in an installment plan to be established by the Board or its designee.

ORDER

Pharmacy Technician License Number TCH 93464, issued to respondent Cheng C. Saecho is REVOKED.

Respondent shall pay the Board \$1,742.50, in an installment plan to be established by the Board or its designee.

Dated: June 9, 2014


ANN ELIZABETH SARLI
Administrative Law Judge
Office of Administrative Hearings

1 KAMALA D. HARRIS
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 KRISTINA T. JANSEN
Deputy Attorney General
4 State Bar No. 258229
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-5403
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

11 In the Matter of the Accusation Against:

Case No. 4706

12 **CHENG C. SAECHAO ·**
13 **5020 Concord Road**
Sacramento, CA 95820

A C C U S A T I O N

14 **Pharmacist Technician Registration No.**
15 **TCH 93464**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about March 11, 2010, the Board of Pharmacy issued Pharmacist Technician
23 Registration Number TCH 93464 to Cheng Chiew Saechao (Respondent). The Pharmacist
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on December 31, 2013, unless renewed.

26 ///

27 ///

28 ///

1 JURISDICTION

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

5 4. Section 4300 of the Code states in pertinent part:

6 (a) Every license issued may be suspended or revoked.

7 (b) The board shall discipline the holder of any license issued by the board, whose default
8 has been entered or whose case has been heard by the board and found guilty, by any of the
9 following methods:

10 (1) Suspending judgment.

11 (2) Placing him or her upon probation.

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

13 (4) Revoking his or her license.

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

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

17 The board shall take action against any holder of a license who is guilty of unprofessional
18 conduct. Unprofessional conduct shall include, but is not limited to, any of the following:

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

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

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

11 6. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
12 surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a
13 disciplinary action during the period within which the license may be renewed, restored, reissued
14 or reinstated.

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

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

22 COST RECOVERY

23 8. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licentiate found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
27 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
28 included in a stipulated settlement.


1 Respondent was convicted for violating Fish and Game Code section 2002, possession of a
2 creature unlawfully taken, a misdemeanor.

3 **PRAYER**

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

- 6 1. Revoking or suspending Pharmacist Technician Registration Number TCH 93464,
7 issued to Cheng C. Saechao.;
- 8 2. Ordering Cheng C. Saechao to pay the Board of Pharmacy the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 125.3;
- 11 3. Taking such other and further action as deemed necessary and proper.

12
13
14 DATED: 7/22/13


15 VIRGINIA HEROLD
16 Executive Officer
17 Board of Pharmacy
18 Department of Consumer Affairs
19 State of California
20 Complainant

21
22
23
24
25
26
27
28
SA2013111642
11113977.doc