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

In the Matter of the Statement of Issues Against:	Case No. 4444
	OAH No. 2014080963
PAUL GOLDBERG,	
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 May 22, 2015.

It is so ORDERED on April 22, 2015.

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 Statement of Issues Against: PAUL GOLDBERG, Respondent.	Case No. 4444 OAH No. 2014080963

PROPOSED DECISION

Irina Tentser, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on February 23, 2015, at Los Angeles, California.

Matthew A. King, Deputy Attorney General, represented Executive Officer Virginia Herold (Complainant) of the Board of Pharmacy (Board).

Paul Goldberg (Respondent) appeared and represented himself.

The Board denied Respondent's application for registration as a Pharmacy Technician based on allegations that Respondent engaged in the dangerous use of a controlled substance, violated laws regulating controlled substances and dangerous drugs, violated Pharmacy Law, and engaged in conduct warranting discipline. Respondent presented evidence that he was entitled to registration as a Pharmacy Technician.

Oral and documentary evidence was received. Complainant moved to amend the Statement of Issues to change "22" to "2" at page 6, line 13. There was no opposition, and the motion was granted.

The record was closed and the matter was submitted on February 23, 2015.

FACTUAL FINDINGS

Jurisdiction

1. Virginia Herold made the Statement of Issues in her official capacity as the Executive Officer of the Board, an agency within the Department of Consumer Affairs.

2. Respondent filed an application for registration as a Pharmacy Technician with the Board on or about July 8, 2011. The application was denied and this hearing took place.

3. Respondent's application was denied by the Board based on the circumstances surrounding Respondent's February 8, 2012 arrest. The facts underlying Respondent's arrest are described below.

The February 8, 2012 Arrest

4. On February 8, 2012, two plain-clothes Los Angeles Police Department officers in an unmarked car observed Respondent's vehicle weaving within the number one lane and straddling the line separating the southbound one and two lanes. The officers drove beside the vehicle and saw Respondent holding a cellular phone to his right ear with his right hand and his right rear passenger not wearing a seat belt. Based on the observations of the plain-clothes officers, uniformed officers were directed to stop Respondent for suspected violations of Vehicle Code sections 21658, subdivision (a) (unsafe lane movement) and 23123, subdivision (a) (use of wireless telephone without hands-free configuration), and 27315 (passenger not wearing seatbelt).

5. After the vehicle was stopped, plain-clothes Officer Johnson spoke with the driver, Respondent, and told him that he had been stopped for lane straddling. Officer Johnson asked Respondent if he had been drinking alcohol or had used any drugs before driving. Respondent admitted that he had smoked medicinal[1] marijuana approximately one hour prior to driving. While speaking with Respondent, Officer Johnson noticed a heavy odor of un-burnt marijuana coming from his person. Respondent admitted to having marijuana in the car, but denied having any on his person. Respondent consented to Officer Johnson searching his clothing for marijuana.

6. Officer Johnson located a single oval shaped yellow pill marked with the numbers "3601" on one side and the letter "V" on the other side during his search of Respondent. The pill contained a combination of acetaminophen and hydrocodone, 325 milligrams (mg) and 10 mg, respectively, commonly known as "Norco."[2] While Officer Johnson was examining the Norco pill, Respondent stated, "I forgot about that. I got it from my mom for my headaches." At hearing, Respondent admitted that the Norco pill was used by him for headaches without a prescription and was obtained from his mother, who was prescribed the Norco based on pain associated with her medical condition.

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[1] No medicinal marijuana card effective February 8, 2012 was provided by Respondent during hearing. Instead, Respondent provided an expired medicinal marijuana card whose effective dates were from March 27, 2012 through March 27, 2013. (Exh. B.)

[2] "Norco" is a brand name for acetaminophen and hydrocodone bitartrate. "Norco" is a narcotic analgesic prescribed for the treatment of mild to moderate pain.

7. A second officer searched the car and found a plastic bag in a small compartment to the left of the steering wheel containing four yellow, rectangular pills bearing the imprint "R0359." The four pills in the bag were Alprazolam 2 mg, commonly known as "Xanax."[3] When Respondent noticed that the yellow Xanax pills were removed from the car, he stated to Officer Johnson, "Officer those are old! Please don't arrest me! I just use them for headaches." Officer Johnson testified that he told Respondent that he did not believe him and told Respondent that he thought Respondent was dealing pills via his phone. Respondent denied Officer Johnson's allegations that he was selling pills and gave the officer his cellphone so that he could review Respondent's text messages.

8. Inspection of the phone revealed the following text messages on February 6, 2012, with a contact named "Joseph":

Joseph "Got yellows?"[4]

Respondent "Ya"

Joseph "Lemme get 3"

Respondent "I'm off at 7"

In another message on February 8, 2012, "Joseph" sent Respondent a text message, saying "[G]ot yellows?"

9. On February 8, 2012, the following text messages were exchanged between Respondent and a contact named "Mariah":

Mariah "Its Mariah need 1 or 2 ZZs later"

Respondent "Got u"

Mariah "Can u front me those an Ill get you Fri?"

10. A vial containing marijuana and a pipe belonging to Respondent was also recovered from the car. Respondent admitted that the marijuana and pipe recovered from the car on February 8, 2012 belonged to him.

11. On February 8, 2012, Respondent was placed under arrest and charged with violation of Health and Safety code section 11351 (possession of a controlled substance for sale).[5]

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[3] "Xanax" is a brand name for Alprazolam. It is a benzodiazepine prescribed for anxiety. Xanax is manufactured as a yellow, rectangular pill imprinted with "R0359."

[4] "Yellows" and "ZZs" are slang terms for Xanax.

12. According to Officer Johnson's testimony, during a post Miranda interview with the arresting officers, Respondent made the following admissions: Respondent denied selling Xanax pills, but admitted to occasionally giving them away to four different friends; he admitted to using Norco without a prescription approximately once a week for headaches and that he obtained the Norco from his mother; he admitted that he used half a Xanax once or twice a month without a prescription to relieve stress; and admitted to smoking marijuana every day.

13. Los Angeles Police Department's Scientific Investigation Division performed an analysis on the pills recovered from Respondent. The results confirmed that the yellow oblong pill stamped with "3601" on one side and "V" on the other side recovered from Respondent was Hydrocodone Bitrate (i.e., "Norco") and that the four yellow rectangular tablets stamped "R039" in the Ziploc bag were Alprazolam (i.e., "Xanax").

14. Respondent was not charged with driving under the influence, was not administered a field sobriety test, and was not tested for the level of drugs in his system at the time of his arrest. Respondent denied at the hearing that his use of marijuana caused him to operate his vehicle in a dangerous manner. The evidence did not establish that the weaving and lane straddling by the car was based on Respondent's marijuana consumption an hour prior to driving. The charge of violation of Health and Safety code section 11351 (possession of a controlled substance for sale) was ultimately dismissed as to Respondent. Accordingly, the February 8, 2012 arrest resulted in no citation(s) and/or conviction(s) for Respondent.

15. At the time of his arrest, Respondent was in the process of completing a Pharmacy Technician training course at United Education Institute and was volunteering as part of his externship in the pharmacy at Westval Pharmacy.

Credibility and Reliability

16. Respondent testified that he used Narco and Xanax occasionally during the relevant time without a prescription, was vague as to where he obtained the Xanax he used, and denied that the four Xanax pills recovered from the car on the day of his arrest belonged to him. He further denied selling pills and disputed Officer Johnson's testimony and the corroborating officer's police report notes that Respondent admitted to giving pills to his friends. Finally, Respondent disputed Officer Johnson's testimony and supporting police report notes that Respondent's car was weaving and lane straddling, and that his cellphone was at his ear at the time of the arrest.

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[5] Respondent's two car occupants were also arrested on February 8, 2012 and charged with violation of Health and Safety code section 11351 (possession of a controlled substance for sale).

17. Respondent's hearing testimony that the Ziploc bag containing four Xanax pills did not belong to him is unreliable and lacks credibility based on his prior contemporaneous statements to Officer Johnson as described in Factual Finding 7. In addition, Officer Johnson's hearing testimony that he saw the second officer remove the Ziploc bag containing the Xanax pills from the console area to the left side of the steering wheel closest to Respondent's driver's seat further supports the fact that the pills belonged to Respondent.

18. Respondent's hearing testimony that he did not furnish prescription pills to his friends is also unreliable and lacks credibility because it is contradicted by his prior statements to police that he did provide prescription pills to four of his friends, as contained in the police report, and the credible testimony of Officer Johnson corroborating the police report. Further, Respondent's text messages, as described in Factual Finding 8 and 9, show that at least two individuals in contact with Respondent thought of Respondent as a source of prescription pills and lend support to the logical conclusion that Respondent did provide prescription pills to friends. His testimony that people assumed that they could "score drugs from me" also supports that he furnished pills.

19. Notwithstanding the fact that Respondent possessed a Narco pill and four Xanax pills on February 8, 2012, used Narco and Xanax without a prescription, and furnished pills to friends, the evidence does not establish that Respondent possessed Norco and Xanax on or between February 6 and February 8, 2012, for purpose of sale. The quantities were small and the content of the text messages set forth in Factual Findings 8 and 9 are insufficient to establish that Respondent intended to sell the pills that were seized. In addition, the allegation that Respondent transported Norco and Xanax by motor vehicle with the purpose of selling drugs is unproven.

20. At hearing, Respondent's was vague regarding where he obtained the Xanax that he admitted to using without a prescription, testifying that he "can't recall" the source of the pills that he used occasionally. Respondent's professed memory lapse as to the source of the Xanax pills lacks credibility based on his ability to recall the remaining details surrounding his drug use during the relevant time period. Respondent's unwillingness to be forthcoming regarding the source of his Xanax pills at hearing is troubling because it evidences a present and potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare.

Pharmacy Technician Position and Duties

21. The Board's investigator, Valerie Sakamura, testified that the pharmacy technician functions as "the right hand of a pharmacist" and is, as a result, in a position of trust at a pharmacy. While the pharmacist is ultimately responsible for what happens in a pharmacy, the pharmacist is not in "full control" and relies on the pharmacy technician not to abuse access to drugs by diverting them outside the distribution chain. It is the equivalent of having a "kid in a candy store" to grant access to prescription medication to an individual, like Respondent, who possessed and used Xanax and Norco without prescription, according

to Ms. Sakamura. Accordingly, it is critical to avoid the criminal diversion of drugs that pharmacy technicians do not have known issues with unauthorized use of prescription medication.

22. Respondent's possession and use of the dangerous drugs of Norco and Xanax without a prescription are actions that are substantially related to the qualification, functions and duties of a Pharmacy Technician licensee.

Respondent's Background, Mitigation, and Rehabilitation

23. After completing his Pharmacy Technician training course at United Education Institute in 2012, Respondent began attending Los Angeles Valley College in February 2014 in pursuit of an associate degree in either pharmacy or law. He has worked as an order entry technician at Skilled Nursing Pharmacy since August 2014. Ms. Kimberly B. Aksentijevic, a licensed pharmacist, and former co-worker, who is "aware of the circumstances surrounding his application denial" provided a letter of recommendation attesting that Respondent is "responsible and reliable." (Exh. A.)

24. Respondent testified that he became "involved with narcotics at a young age." He blames his involvement with drugs on the people he associated with in the neighborhood where he grew up and on his young age. Respondent describes himself as a "different person" than the one he was at the time of the arrest. He has moved out of his childhood neighborhood, severed all ties to the people he was arrested with, is pursuing his education, and is gainfully employed.

LEGAL CONCLUSIONS

1. Business and Professions Code[6] section 4300 authorizes the Board to refuse an applicant's application for registration as a Pharmacy Technician. After refusal of the application, the burden of proof is on the license applicant to show that he or she is qualified to hold the license. To prevail in this matter, Respondent must demonstrate by a preponderance of the evidence that he is entitled to a Pharmacy Technician license. (Evid. Code, §§ 115, 500.)

2. A preponderance of the evidence establishes that the existence of a factual matter is more likely than not. As one court explained, "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it." (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

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[6] All further statutory references are to the Business and Professions Code unless otherwise indicated.

3. Section 480, subdivision (a), addresses the Board's authority to deny a license application. It states, in pertinent part:

> A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> [¶] . . . [¶]
>
> (3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> (B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

4. 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 licensee.
>
> [¶] . . . [¶]
>
> (j) The violation of any of the statues of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.
>
> [¶] . . . [¶]
>
> (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provisions or term of this chapter or of the applicable federal and state laws and

regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

5. Section 4060 states, in pertinent part, that "[N]o person shall possess any controlled substance, except that furnished to a person upon. . . prescription. . . ." Norco is a Schedule II controlled substance[7] and a dangerous drug. (Health & Saf. Code §§ 11055, subd. (b)(1)(I), 11056; Bus. & Prof. Code, § 4022.) Xanax is a Schedule IV controlled substance and a dangerous drug. (Health & Saf. Code § 11057, subd. (d)(1); Bus & Prof. Code, § 4022.)

6. Health and Safety Code section 11350, subdivision (a) states, in pertinent part:

> Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

7. Health and Safety Code section 11351 states:

> Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

8. Health and Safety Code section 11352, subdivision (a) states, in pertinent part:

> Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of

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[7] At the time of Respondent's arrest, Norco was classified as a Schedule III controlled substance and a dangerous drug requiring a prescription for use.

Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

[¶] . . . [¶]

(c) For purposes of this section, "transports" means to transport for sale . . . [¶].

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

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

10. Cause exists to deny Respondent's application for registration under section 4301, subdivision (j), California Code of Regulations, title 16, section 1770, and Health and Safety Code section 11350 for unprofessional conduct in that Respondent possessed one pill of Norco and four pills of Xanax on February 8, 2012 without a prescription for either controlled substance. (Factual Findings 6-7, 12-13, 16-17, and 22; Legal Conclusions 4, 6, and 9.)

11. Cause exists to deny Respondent's application for registration under sections 4301, subdivision (j), and 4060, and California Code of Regulations, title 16, section 1770, for unprofessional conduct in that Respondent possessed controlled substances, Norco and Xanax, illegally without a prescription on February 8, 2012. (Factual Findings 6-7, 12-13, 16-17, and 22; Legal Conclusions 4, 5, and 9.)

12. Cause exists to deny Respondent's application for registration under sections 4301, subdivision (o), and 4060, and California Code of Regulations, title 16, section 1770, for unprofessional conduct in that Respondent violated Pharmacy Law by possessing the controlled substances of Norco and Xanax without a prescription on February 8, 2012. (Factual Findings 6-7, 12-13, 16-17, and 22; Legal Conclusions 5 and 9.)

13. Cause exists to deny Respondent's application under sections 480 subdivision (a)(3), and 4060, and California Code of Regulations, title 16, section 1770, in that Respondent possessed and used the controlled substances of Norco and Xanax without a prescription, which act, if done by a Pharmacy Technician, would be grounds for suspension

or revocation of his license. (Factual Findings 6-7, 12-13, 16-17, and 22; Legal Conclusions 3, 5, and 9.)

14. Cause does not exist to deny Respondent's application for registration under section 4301, subdivision (h), or California Code of Regulations, title 16, section 1770 for unprofessional conduct in that the evidence does not support the allegation that Respondent used marijuana to an extent and in a manner as to be dangerous or injurious to himself and to the public. (Factual Findings 4, 5 and 14; Legal Conclusions 4 and 9.)

15. Cause does not exist to deny Respondent's application for registration under section 4301, subdivision (j), California Code of Regulations, title 16, section 1770, or Health and Safety Code section 11351 for unprofessional conduct in that the evidence does not support the allegation that Respondent possessed Norco and Xanax for purpose of sale on or between February 6 and February 8, 2012. (Factual Findings 6-9, 11-14, 16-17, and 19; (Legal Conclusions 4, 7, and 9.)

16. Cause does not exist to deny Respondent's application for registration under section 4301, subdivision (j), California Code of Regulations, title 16, section 1770, or Health and Safety Code section 11352 for unprofessional conduct in that the evidence does not support the allegation that Respondent transported Norco and Xanax by motor vehicle with the purpose of selling the drugs on February 8, 2012. (Factual Findings 6-9, 11-14, 16-17, and 19; Legal Conclusions 4, 8, and 9.)

17. Section 4307 states, in pertinent part:

> (a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension. . . shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:
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> (1) Where a probationary license is issued . . . [¶]. . . this prohibition shall remain in effect for a period not to exceed five years.
>
> (2) Where the license is denied . . . [¶] . . ., the prohibition shall continue until the license is issued . . . [¶] . . . .

18. Cause exists to prohibit Respondent from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee until a license is issued to him under section 4307 based on the denial of his application for registration as a Pharmacy Technician. (Legal Conclusions 17 and 20.)

19. Applying the Board's rehabilitation criteria and the factors to be considered in determining penalties to this matter, it is first noted that Respondent committed the acts of possessing and using the controlled substances of Norco and Xanax without prescription

while enrolled in his Pharmacy Technician training program and while completing an externship at a pharmacy. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(1).) No evidence of subsequent acts by Respondent that violate Pharmacy Law were presented at hearing. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(2).) A relatively short period of two years has elapsed since Respondent's possession and use of prescription medication without prescription. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(3).) Respondent's arrest did not result in sanctions being imposed and, indeed, the charges against him were dismissed. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(4).) Finally, Respondent testified that he no longer used prescription drugs, no longer associated with the individuals with whom he was arrested, was in the process of furthering his education, and submitted a letter of recommendation from a licensed pharmacist that attested to his good character. (Cal. Code Regs, tit. 16, § 1789, subd. (b)(5).)

20. Rehabilitation requires fully acknowledging the wrongfulness of past actions. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Respondent's hearing testimony clearly shows that Respondent has not attained the necessary rehabilitation. In fact, Respondent did not express remorse for his actions at trial. Instead, he deflected responsibility for his arrest on his companions, his youth, and his childhood neighborhood. Further, Respondent attacked the credibility of Officer Johnson without corroborating evidence of the officer's bias. The fact that Respondent used controlled substances without a prescription coupled with his unwillingness to be forthcoming about where he obtained the Xanax he possessed and obtained show that his rehabilitation is incomplete. Accordingly, allowing Respondent to be granted his application for registration as a Pharmacy Technician at this time would result in potential harm to the public and to consumers.[8] The public interest will be better served and protected by denying Respondent's application for registration as a Pharmacy Technician.

ORDER

The application of Respondent Paul Goldberg for a registration to act as a Pharmacy Technician is denied.

DATED: March 13, 2015

Irina Tentser
Administrative Law Judge
Office of Administrative Hearings

[8] California State Board of Pharmacy Disciplinary Guidelines (Rev. 10/2007) at pg. 3.

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

In the Matter of the Statement of Issues Against: **PAUL GOLDBERG** **Applicant for Pharmacy Technician Registration** Respondent.	Case No. 4444 **STATEMENT OF ISSUES** [Gov. Code, § 11504.]

Complainant alleges:

PARTIES

1. Complainant Virginia Herold brings this Statement of Issues solely in her official capacity as the Executive Officer of the Board of Pharmacy, an agency within the Department of Consumer Affairs.

2. On August 16, 2011, the Board received an application for registration as a Pharmacy Technician from Respondent Paul Goldberg. On July 8, 2011, Respondent certified under penalty of perjury to the truthfulness of all statements, answers and representations in the application. The Board denied the application on August 30, 2012.

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JURISDICTION

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 4300 states, in pertinent part, that "every license issued by the Boards is subject to discipline, including suspension or revocation."

STATUTORY PROVISIONS

5. Section 480 of the Code states, in pertinent part:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

...

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(3)(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

(b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482...

6. Section 4060 of the Code states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer...

7. 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.

...

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

...

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

8. Section 4307 states, in pertinent part:

(a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension...shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued..., this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied..., the prohibition shall continue until the license is issued....

REGULATORY PROVISIONS

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

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

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DRUG STATUTES

10. Health and Safety Code section 11350 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

11. Health and Safety Code section 11351 states:

Except as otherwise provided in this division, every person who possesses for sale or purchases for purposes of sale (1) any controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

12. Health and Safety Code section 11352 states, in pertinent part:

(a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

...

(c) For purposes of this section, "transports" means to transport for sale...

DRUG CLASSIFICATIONS

13. Marijuana is a Schedule I controlled substance and a dangerous drug. (Health & Saf. Code, §11054, subd. (d)(13); Bus. & Prof. Code, § 4022.)

14. Norco is a brand name for acetaminophen and hydrocodone bitartrate. It is a narcotic analgesic indicated for the treatment of mild to moderate pain. Norco is a Schedule III controlled substance and a dangerous drug. Norco is manufactured as a yellow, oval pill bearing the imprint "3601V." (Health & Saf. Code, §§ 11055, subd. (b)(1)(I), 11056; Bus. & Prof. Code, § 4022.)

15. Xanax is a brand name for Alprazolam. It is a benzodiazepine indicated for anxiety. Xanax is a Schedule IV controlled substance and a dangerous drug. Xanax is manufactured as a yellow, rectangular pill imprinted with "R039." (Health & Saf. Code, § 11057, subd. (d)(1); Bus. & Prof. Code, § 4022.)

STATEMENT OF FACTS

16. On February 8, 2012, two plain-clothes officers in an unmarked car observed Respondent driving in an unsafe manner. Respondent was weaving and twice drove across the painted line separating traffic traveling in the same direction. As the police car neared Respondent's, the officers noticed that Respondent was holding a phone to his ear and Respondent's passenger was not wearing a seatbelt.

17. Uniformed officers of the Los Angeles Police Department stopped Respondent for suspected violations of Vehicle Code sections 21658, subdivision (a) (unsafe lane movement); 23123, subdivision (a) (use of wireless telephone without hands-free configuration); and 27315 (passenger not wearing seatbelt).

18. One of the plain-clothes officers smelled a heavy odor of marijuana on Respondent and asked Respondent if he used drugs or consumed alcohol before driving. Respondent replied that he smoked medical marijuana approximately one hour before driving. Respondent told the officer that he did not have any marijuana with him and consented to a search of his clothing.

19. The officer uncovered a yellow, oval pill with the inscription "3601V" from the sweatband of Respondent's baseball cap. The shape, color and imprint of the drug identify the pill as hydrocodone bitartrate 10mg/acetaminophen 325mg, which is generic for Norco. Respondent did not have a valid prescription for Norco.

20. A second officer searched the car and found a plastic bag near the steering wheel containing four yellow, rectangular pills bearing the imprint "R039." The shape, color and imprint of the pills correspond to Alprazolam 2mg. Upon seeing the Alprazolam pills being removed from the car, Respondent protested, "officer, those are old! Please don't arrest me! I just use them for headaches." Respondent did not have a prescription for the Alprazolam but denied that he was planning to sell them. Respondent unlocked his phone and gave permission to

the officer to read his text messages.

21. On February 6, 2012, Respondent communicated through text messages with an individual whose telephone number was saved in Respondent's phone under the name of "Joseph." The conversation between Respondent and "Joseph" was as follows:

Joseph	"Got yellows"?
Respondent	"Ya"
Joseph	"Lemme get 3"
Respondent	"I'm off at 7"

22. On February 8, 2012, the day of the enforcement stop, "Joseph" sent Respondent a text message, saying "[g]ot yellows"?

23. Also on February 8, 2012, Respondent communicated via text messages with an individual identifying herself as "Mariah." Their conversation was as follows:

Mariah	"It[']s Mariah need 1 or 22 ZZs later"
Respondent	"Got u"
Mariah	"Can u front me those an I[']ll get you on Fri?"

24. "Yellows" and "ZZs" are slang for Xanax.

FIRST CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of a Controlled Substance)

25. Respondent's application is subject to denial under Code section 4301, subdivision (h), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional conduct in that Respondent used marijuana to an extent and in a manner as to be dangerous or injurious to himself and to the public. Complainant realleges paragraphs 16–24.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Violate Laws Regulating Controlled Substances and Dangerous Drugs)

26. Respondent's application is subject to denial under Code section 4301, subdivision (j), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional conduct in that Respondent violated state statutes regulating controlled substances and dangerous drugs, as follows:

a. **Health & Saf. Code, § 11350**: Health and Safety Code section 11350 proscribes the possession of any controlled substance unless upon a valid prescription. On February 8, 2012, Respondent possessed one pill of the controlled substance Norco 10mg and four pills of the controlled substance Xanax 2mg. Respondent did not have a prescription for either substance. Complainant realleges paragraphs 16–24.

b. **Health & Saf. Code, § 11351**: Health and Safety Code section 11351 makes it illegal to possess a controlled substance with the intent to sell it. On or between February 6 and February 8, 2012, Respondent possessed Norco and Xanax for purpose of sale. Complainant realleges paragraphs 16–24.

c. **Health & Saf. Code, § 11352**: Health and Safety Code section 11352 prohibits the transportation for sale of a controlled substance unless upon a valid prescription. On February 8, 2012, Respondent transported Norco and Xanax by motor vehicle and did so with the purpose of selling the drugs. Complainant realleges paragraphs 16–24.

d. **Bus. & Prof. Code, § 4060**: Code section 4060 prohibits the possession of a controlled substance except upon a valid prescription. On February 8, 2012, Respondent illegally possessed Norco and Xanax. Complainant realleges paragraphs 16–24.

THIRD CAUSE FOR DENIAL OF APPLICATION

(Violate Pharmacy Law)

27. Respondent's application is subject to denial under Code section 4301, subdivision (o), in conjunction with California Code of Regulations, title 16, section 1770, for unprofessional conduct in that Respondent violated the Pharmacy Law. Complainant realleges paragraphs 16–26.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Conduct Warranting Discipline)

28. Respondent's application is subject to denial under Code section 480, subdivisions (a)(3)(A)–(a)(3)(B), in conjunction with California code of Regulations, title 16, section 1770, in that Respondent committed acts that if done by a Pharmacy Technician would be grounds for suspension or revocation of his license. Complainant realleges paragraphs 16–27.

OTHER MATTERS

29. Pursuant to section 4307 of the Code, if a probationary license is issued to Respondent, then he shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate or partner of a licensee for a period not to exceed five years. Where the license is denied, the prohibition shall continue until a license is issued.

PRAYER

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

1. Denying the application of Paul Goldberg for registration as a Pharmacy Technician;

2. Prohibiting Respondent Paul Goldberg from serving as a manger, administrator, owner, member, officer, director, associate or partner of a licensee for a period not to exceed five years in the case of a probationary license, or, in the case of denial, until a license is issued; and

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

DATED: 8/8/14

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

LA2012507991/51206676