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

In the Matter of the Statement of Issues Against:	Case No. 5454
ISRAEL EBENEZER SOWA,	OAH No. 2015090052
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 December 30, 2015.

It is so ORDERED on November 30, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____
Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

Administrative Law Judge Abraham M. Levy, Office of Administrative Hearings State of California, heard this matter on September 28, 2015, in San Diego, California.

Diane De Kervor, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs (the Board).

Respondent Israel Ebenezer Sowa represented himself.

The matter was submitted on September 28, 2015.

FACTUAL FINDINGS

Jurisdiction and Background

1. Respondent signed a pharmacy technician application on April 7, 2014, and the Board received it on May 1, 2014. On February 20, 2015, the Board denied the application due to Respondent's multiple criminal convictions between 2008 and 2014 and because he failed to disclose two of his convictions on his application.

Respondent appealed, and Complainant issued a statement of issues on July 8, 2015. The statement of issues alleged that Respondent was convicted of the following crimes substantially related to the qualifications, functions or duties of a pharmacy technician: vandalism on February 6, 2008; possession of graffiti tools on June 13, 2008; driving under the influence on June 9, 2009; making criminal threats and engaging in vandalism on September 28, 2011; and hit and run driving on April 9, 2014. The statement of issues also

alleged as a cause of denial that Respondent made false statements and committed dishonest acts in his application by failing to disclose the February 6, 2008 conviction, and that he dated his application April 7, 2014, to avoid disclosing his April 9, 2014, conviction. The statement of issues further alleged that Respondent used alcohol in a manner dangerous to himself and to others in connection with his offense for driving under the influence.

Respondent timely filed a notice of defense.

The Duties and Responsibilities of Pharmacy Technicians

2. Joshua Lee, Pharm. D., a licensed pharmacist and Board inspector, testified that a registered pharmacy technician assists and is supervised by a pharmacist in a retail pharmacy setting. A registered pharmacy technician has access to confidential consumer information; receives and processes prescriptions; and dispenses medications, including controlled substances, to customers. In addition, a registered pharmacy technician counts medications and fills prescriptions, which are verified by a pharmacist or pharmacist-in-charge. A pharmacy technician is expected to use good judgment, to perform his or her duties in a safe manner, and to obey all laws and regulations applicable to the pharmacy setting and the licensed activity. A registered pharmacy technician must be trustworthy, reliable, accurate, and able to interact professionally with customers and the public.

Respondent's Criminal Convictions

3. On February 6, 2008, in the Superior Court of California, County of Orange, Respondent pled guilty and was convicted of violating Penal Code section 594.2, subdivisions (a)(1) and (b)(1), vandalism with damage over $400, a misdemeanor. The court placed Respondent on formal probation for three years. As conditions of his probation, Respondent was required to remove graffiti for 200 hours; not own or possess graffiti tools, paints and markers; not associate with taggers or wear clothing associated with taggers; and pay restitution. He was further ordered to serve 20 days in jail, 14 of which could be served through a work release program.

The court found Respondent in violation of probation and revoked his probation after he was cited for possession of graffiti tools on March 14, 2008. Ultimately, the court reinstated Respondent's probation on the same terms as it was initially granted. When Respondent paid the balance of fines and fees, the court modified his probation from a formal to an informal status.

4. The facts and circumstances leading to this conviction were as follows: On February 2, 2008, Santa Ana police officers on routine patrol saw Respondent and three others facing a grocery store wall holding spray cans.[1] When the officers directed their

[1] The police reports referenced in this decision were all received under *Lake v. Reed* (1997) 16 Cal. 4th 448.

vehicle spotlight at the group, Respondent and the others ran a short distance and threw the cans over a chain link fence. They stopped running at the direction of the officers. The officers smelled a strong odor of aerosol spray in the immediate area. The officers saw a truck parked in the grocery store parking lot and a grocery store wall sprayed with different tags. The officers recognized one of the tags as the name of an Orange County street gang. Respondent told the officers that he and the three others were drinking and decided to tag a business. He drove with the other three persons to the business and while his three friends tagged the wall of the business he tagged the truck. The officers arrested Respondent and the three others for felony vandalism.

5. On June 13, 2008, in the Superior Court, County of Orange, Respondent pled guilty and was convicted of violating Penal Code section 594.2, subdivision (a), possession of graffiti tools, a misdemeanor. The court ordered Respondent to pay fines and fees.

6. The facts and circumstances leading to this offense were as follows: On March 14, 2008, while investigating an alarm at a commercial property, City of Orange police saw Respondent and two friends walking through a parking lot. Respondent and the two others were wearing dark clothes and gloves. When questioned by the officers, Respondent told the officers that he ran out of gas, and he did not have identification. After further questioning, Respondent admitted that he lied about his lack of identification and having run out of gas. He told the officers that he was on probation for vandalism. The officers then searched Respondent and found a spray can and a permanent marker. Respondent told the officers that he intended to tag properties in the area. The officers cited Respondent for possession of graffiti tools and released him.

7. On June 10, 2009, in the Superior Court, County of Orange, Respondent pled guilty and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the influence of alcohol; and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration of 0.08 percent or more, both misdemeanors. The court placed Respondent on informal probation for three years and sentenced him to five days in jail to be served through a work release program. As conditions of his probation, Respondent was ordered to complete a three-month first-offender alcohol program and a MADD Victim Impact panel session; pay fines and fees; and comply with the terms of DUI probation. On November 12, 2009, the court found Respondent in violation of probation because he failed to complete the MADD session. Although the court reinstated probation, on April 29, 2010, it again found Respondent in violation of his probation because he failed to pay the ordered restitution and fines. The court reinstated Respondent's probation and modified it to allow Respondent to complete community service in lieu of paying fines.

8. The facts and circumstances of the offense were as follows: On March 21, 2009, a Santa Ana police officer observed Respondent driving and colliding into the rear of another car. The officer instructed Respondent and the driver of the other vehicle drive into a parking lot where he interviewed Respondent and the other driver. The officer smelled alcohol on Respondent and saw that his eyes were bloodshot and watery. The officer summoned another police officer who administered a series of field sobriety tests on

Respondent. Respondent was unable to satisfactorily perform the tests and exhibited objective signs of intoxication. He also told the officer that he felt very intoxicated from the effects of the alcohol. A breathalyzer revealed levels of 0.162 and 0.164 percent. Respondent was arrested for driving under the influence. A blood sample taken from Respondent after his arrest showed a BAC of 0.14 percent.[2]

9. On September 28, 2011, in the Superior Court, County of Orange, Respondent pled guilty and was convicted of violating Penal Code sections 422, making criminal threats, and section 594, subdivision (a) and (b)(2)(4), vandalism under $400, all misdemeanor offenses. The court placed Respondent on informal probation for three years and ordered him to serve 180 days in jail; ordered that he not own or possess deadly weapons; pay fines and fees; pay restitution to the victims; and submit a Fourth Amendment waiver. The court issued a protective order for the victims. On April 9, 2014, the court found Respondent in violation of probation for failing to comply with its terms. The court reinstated probation on the same terms.

10. The facts and circumstances leading to the convictions were as follows: On September 26, 2011, at close to three in the morning, Santa Ana police were sent to Respondent's residence concerning a reported disturbance. According to witness statements, family members asked Respondent to lower the volume on music he was playing. After he turned the music down, he punched the bedroom door of his family member and knocked it off its hinges and threatened to kill them. The family members became alarmed because they knew that Respondent had a gun and they called 911. When questioned by the police officers Respondent denied that he had a gun, but he allowed the officers to search his bedroom. Inside a locked safe, the officers found a chrome revolver, .38 caliber ammunition, a blue bandana, and two pairs of black gloves. Respondent told the officers that he bought the gun on the street to protect himself, and that it was not registered.

11. On April 9, 2014, in Superior Court, Orange County, Respondent was convicted on his plea of guilty to violating Vehicle Code section 20002, subdivision (a), hit and run with property damage, a misdemeanor. The court placed Respondent on informal probation for three years with the requirements that he pay fines, fees and restitution; and ordered him to serve 10 days in jail or in a work release program.

12. The facts and circumstances giving rise to this conviction were as follows: At about three in the morning on February 2, 2014, Santa Ana police responded to a report of a hit and run collision. When the officers arrived at the scene, they saw a truck parked at the curb and a car with major front end damage to the car lodged under the truck's fender. The officers discovered that the car was registered to Respondent's mother; they went to the address but no one answered the door. The next day, Respondent's family member called the police and reported that Respondent had been the driver. On February 6, 2014, Respondent went to the police station and admitted that he was the driver. He told the officer

[2] In the plea form Respondent signed he admitted that his BAC was .014 percent.

that he left the scene because he panicked and ran home, which was only a block away. Respondent was arrested and charged with hit and run driving.

Respondent's Application Answers Regarding his Convictions

13. Question 7 on the pharmacy technician application asks, "Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country?" Respondent answered, "Yes" and he disclosed the June 13, 2008, the June 10, 2009, and September 28, 2011 convictions. He did not disclose the February 6, 2008, or April 9, 2014, convictions.

Respondent dated his application April 7, 2014, and mailed it to the Board at some time after that date. In his application, he included an "Affidavit of Completed Coursework or Graduation For Pharmacy Technician" signed by the Academic Program Director at Everest College, dated April 15, 2014. The Board marked as "received" Respondent's application on May 1, 2014.

By signing the application, Respondent certified under penalty of perjury "to the truth and accuracy of all statements, answers and representations made in this application." Respondent failed to disclose that he was convicted of vandalism on February 6, 2008.

Respondent also failed to disclose to the Board the April 9, 2014 hit and run conviction. Although he dated the application April 7, 2014, which was two days before he was convicted of the offense, he included with his application an affidavit dated April 15, 2014. Thus, when he mailed the application to the Board after April 15th, he knew he had been convicted on April 9th. In an effort to deceive the Board, Respondent dated the application April 7th and then waited until April 15th to mail the application.

Respondent's Testimony and Evidence

14. Respondent is 29 years old. He has a high school education and he completed a pharmacy technician course at a technical college. He is not currently working, and he lives with his parents.

Respondent wants to be a pharmacy technician to better his life. He said that he wanted to change his life after he spent time in jail in 2011. After he was released from jail, he looked into going to school and learned about becoming a pharmacy technician. He said that he is a changed person because of his experience at school. School, he said, helped keep him out of trouble and remain sober. He noted that he greatly enjoyed working as a volunteer and intern for two pharmacies.

Respondent denied that he purposely failed to report the February 6, 2008 and April 9, 2014 convictions. Respondent said that he forgot about the convictions because he did not have the records in front of him.

He attributed his criminal history to his association with the wrong people. He also said that he is beginning to recognize that he has a drinking problem, which contributed to his past behavior, but he has not undergone any treatment. Respondent said he wants to change his life in order to improve his life and his opportunities.

15. Merari Chavez, Respondent's sister, testified on his behalf. She has worked as a front office receptionist for an urgent care clinic for the last ten years. She has an Associate's degree and has a certificate in medical billing.

Ms. Chavez believes her brother deserves a second chance. She described him as an "awesome" brother and uncle who is helping take care of their elderly parents. Ms. Chavez said that her brother has changed because of his experience at school. While studying to become a pharmacy technician, he was excited and focused.

She said that her brother had a drinking problem in the past, but she did not believe he has a drinking problem now.

16. Respondent submitted a letter from Sarah M. Núñez. Ms. Núñez works at Everest College where Respondent received training as a pharmacy technician. She observed him at the school and at the pharmacy where he performed his externship. Based on these observations, Ms. Núñez said that Respondent was dedicated to his studies and to becoming a pharmacy technician and committed to moving forward with his life. Ms. Núñez asked that the Board give Respondent the opportunity to show what he can achieve.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In a proceeding involving the issuance of a license, the burden of proof is on the applicant to show that he or she is qualified to hold the license. The standard of proof is a preponderance of the evidence. (Evid. Code § 115; *California Administrative Hearing Practice* (Cont. Ed. Bar 2d ed. 2010) The Hearing Process, § 7.53, p. 377.) , and the cases cited therein.)[3]

Disciplinary Statutes and Regulations

2. The Board may deny an application for a pharmacy technician registration if the applicant has been convicted of a crime substantially related to the qualifications, functions, or duties of a licensee. (Bus. & Prof. Code, § 480, subds. (a)(1) & (a)(3)(B).) A conviction is substantially related "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

[3] Under Business and Professions Code section 493, in a proceeding to deny a license, "license" includes "registration."

registration in a manner consistent with the public health, safely or welfare." (Cal. Code Regs., tit. 16, § 1770.)

3. The Board may deny an application for a pharmacy technician registration if the applicant has done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself, or if the applicant has knowingly made a false statement of fact required to be revealed in the application for a license. (Bus. & Prof. Code, § 480, subds. (a)(2) & (d).)

4. The Board may deny an application for a pharmacy technician registration if the applicant has done any act that if done by a licentiate would be grounds for the suspension or revocation of a license. (Bus. & Prof. Code, § 480, subd. (a)(3)(A).)

5. Under Business and Professions Code section 4301, the Board may take action against any licensee who is guilty of unprofessional conduct. (Bus. & Prof. Code, § 4301.) Unprofessional conduct includes: the commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not; the administering to oneself 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; and the conviction of a crime substantially related to the qualifications, functions and duties of a licensee. (Bus. & Prof. Code, § 4301, subd. (f), (h), and (l).)

Cause Exists to Deny Respondent's Application

6. Cause exists to deny Respondent's pharmacy technician registration application under Business and Professions Code section 480, subdivisions (a)(1), (a)(3)(A) and (B), and Business and Professions Code section 4301, subdivision (l). Respondent was convicted of five crimes between 2008 and 2014, each of which is substantially related to the qualifications, functions and duties of a pharmacy technician. Moreover, considered as a whole, they show Respondent's sustained disregard of the law and the public safety and welfare. As a result, these crimes evidence a present or potential unfitness of Respondent to perform the functions of a pharmacy technician consistent with the public health, safety or welfare.

7. Cause exists to deny Respondent's pharmacy technician registration application under Business and Professions Code sections 480 (a)(3)(A), and 4301, subdivision (h), on the basis that on March 21, 2009, Respondent used alcohol in a manner dangerous to himself and to others when he crashed his car into another car while impaired from alcohol with a BAC of 0.14 percent.

8. Cause exists to deny Respondent's pharmacy technician registration application under Business and Professions Code sections 480, subdivisions (d), and 4301,

subdivision (f). Respondent knowingly made a false statement in his pharmacy registration application when he did not disclose his February 6, 2008 criminal conviction.

9. Cause does not exist to deny Respondent's pharmacy technician registration application under Business and Professions Code section 480, subdivision (a)(2), relating to his failure to disclose the February 6, 2008 conviction. The evidence does not support the allegation that he failed to report the February 6, 2008, in an effort to substantially benefit himself.

10. Cause exists to deny Respondent's registration application under Business and Professions Code sections 480, subdivision (a)(2), and 4301, subdivision (f). Respondent misdated his application April 7, 2014, two days before he was convicted on April 9, 2015, and then sent the application between April 15, 2014 and May 1, 2014, in order to deceive the Board.

Rehabilitation Criteria

11. California Code of Regulations, title 16, section 1769 provides in part:

> (a) When considering the denial of a . . . personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:
>
> > (1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.
> >
> > (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.
> >
> > (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
> >
> > (4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.
> >
> > (5) Evidence, if any, of rehabilitation submitted by the applicant . . .

12. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.)

Evaluation and Disposition

13. Considering the factors listed in California Code of Regulations, title 16, section 1769, Respondent failed to show that he is sufficiently rehabilitated to warrant registration as a pharmacy technician. Between 2008 and 2014, Respondent committed five serious crimes, including a violent crime in 2011; he repeatedly disregarded the law; and he engaged in conduct that threatened the public safety and welfare. Since 2008, Respondent has been on criminal probation and remains on probation. He violated probation several times, and while on probation he committed crimes. Although Respondent admitted he has a drinking problem and his drinking contributed to several of his criminal convictions, he has not sought therapy or counseling to address his use of alcohol. Finally, Respondent was not honest with the Board in his pharmacy technician registration application.

Respondent is commended for starting to change his life to make a better life for himself. But, considering the totality of the evidence, this factor alone does not justify granting Respondent's application for a pharmacy technician registration.

ORDER

The application of Respondent Israel Ebenezer Sowa for a pharmacy technician registration is denied.

DATED: October 21, 2015

ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings

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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:	Case No. 5454
ISRAEL EBENEZER SOWA	**STATEMENT OF ISSUES**
Pharmacy Technician Registration Applicant	
Respondent.	

Complainant alleges:

PARTIES

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

2. On or about May 1, 2014, the Board of Pharmacy, Department of Consumer Affairs received an application for a Pharmacy Technician Registration from Israel Ebenezer Sowa (Respondent). On or about April 7, 2014, Israel Ebenezer Sowa certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on February 20, 2015.

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JURISDICTION

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

4. Section 4300, subdivision (c) of the Code provides, in pertinent part, that the Board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure.

STATUTORY PROVISIONS

5. Section 475 of the Code states:

> (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
>
> (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
>
> (2) Conviction of a crime.
>
> (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
>
> (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
>
> (b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a) .
>
> (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

> (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
>
> (1) Been convicted of a crime. 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, 1203.4a, or 1203.41 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(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, a person shall not 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.

(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license.

7. Section 493 of the Code states:

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

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

8. Section 4301 of the Code states:

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:

. . . .

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

. . . .

(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.

. . . .

(l) 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 1769 states:

(a) When considering the denial of a facility or personal license under Section 480 of the Business and Professions Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider the following criteria:

(1) The nature and severity of the act(s) or offense(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 of the Business and Professions Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

. . . .

10. 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.

FIRST CAUSE FOR DENIAL OF APPLICATION

(February 6, 2008 Criminal Conviction for Vandalism on February 2, 2008)

11. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered pharmacy technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On February 6, 2008, in a criminal proceeding entitled *People of the State of California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number 08CM00916, Respondent was convicted on his plea of guilty to violating Penal Code section 594, subdivisions (a) and (b)(1), vandalism with damage over $400, a felony which the court agreed to reduce to a misdemeanor when Respondent completed graffiti removal and payment of fines.

b. As a result of the conviction, the court sentenced Respondent to serve 20 days in the Orange County Jail, with pre-custody credit for six days, to be served with the CalTrans physical labor program. Respondent was granted probation for three years. Under the Grafitti/Tagger Terms and Conditions of Probation, Respondent was ordered to complete graffiti removal for 200 hours, not own or possess or associate with anyone in possession of any paints, markers or tools used to mark or deface a surface, not communicate with, accompany, or associate with taggers, not wear or possess any article of clothing to signify membership in a

tagger group, and to pay restitution to reimburse the victim business for the costs associated with graffiti removal. Respondent's driving privileges were suspended for one year. Respondent was further ordered to pay fees and fines, and to stay away from the victim/business. On March 27, 2008, the court revoked Respondent's probation after he was cited and released by the Orange Police Department for being in possession of a 10 oz. can of aerosol paint, he was accompanied by another tagger, and he did not possess a valid picture identification to avoid disclosing he was on probation. Respondent failed to appear at his probation violation arraignment hearing and a bench warrant was issued for his arrest on May 12, 2008. Respondent's probation was reinstated on the same terms. At a hearing on July 10, 2008, the court reduced probation to informal for the balance of the term

c. The facts that led to the conviction are that on the evening of February 2, 2008, officers with the Santa Ana Police Department were patrolling the Westend District when they observed Respondent and three males facing the east wall of a grocery store. As the officers approached, the officers observed that Respondent and another male held cans of aerosol spray paint. When the officers directed their spotlight, Respondent and his accomplice ran approximately 15 feet and threw their cans of spray paint over a chain link fence. Upon contact with the four individuals, the officers could smell a strong odor of aerosol paint in the immediate area. A white truck parked in the store's parking lot was freshly spray-painted with the letters "OCDX3" on its driver's side door and the roof. "OCDX3 Drifters," the tag for an Orange County street gang, and the monikers "Demon" and "Psycho" had been spray-painted on the east wall of the business. On the west wall, "OCDX3" and the monikers "Dream Killers" had been spray-painted on the west wall of the business. All of the spray paint was still wet, indicating it had been recently applied. The officers retrieved the two cans of spray paint from where Respondent and his friend had thrown them. Inside a sport utility vehicle owned by Respondent the officers found a third can of spray paint and a jumbo permanent marker. The car stereo was playing loudly. All four individuals were arrested for felony vandalism and participating in a street gang. During questioning, Respondent told an investigator that he was an active member of the Orange County Drifters gang.

SECOND CAUSE FOR DENIAL OF APPLICATION

(June 13, 2008 Criminal Conviction for Possession of Graffiti Tools on March 14, 2008)

12. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered pharmacy technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On June 13, 2008, in a criminal proceeding entitled *People of the State of California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number 08CM00916, Respondent was convicted on his plea of guilty to violating Penal Code section 594.2, subdivision (a), possession of graffiti tools, a misdemeanor. Pursuant to a plea agreement, the court dismissed an additional count of violating Penal Code section 853.7, failure to appear.

b. As a result of the conviction, the court suspended sentence, and Respondent was ordered to pay fees and fines.

c. The facts that led to the conviction are that 40 days after his previous arrest, on March 14, 2008, officers with the Orange Police Department were investigating an alarm at a commercial property when they observed Respondent and two friends walking through the parking lot. All three males were wearing dark clothing and gloves. The officers made contact with the three individuals; none of them were carrying identification. They told the officers that their vehicle had run out of gas, so they were walking to a friend's house. When Respondent identified himself as the owner of the vehicle, he admitted he lied about his identification because he did not want to admit he was on probation for vandalism. Inside the beltline of Respondent's pants the officer found an aerosol can of paint, and a permanent marker inside Respondent's front pants pocket. During questioning, Respondent admitted that they had not run out of gas; he parked in the lot because they intended to tag properties in the area. All three were arrested for possession of graffiti tools, cited, and released with a promise to appear on May 12, 2015.

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THIRD CAUSE FOR DENIAL OF APPLICATION

(June 10, 2009 Criminal Convictions for DUI on March 21, 2009)

13. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered pharmacy technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On June 10, 2009, in a criminal proceeding entitled *People of the State of California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number 09CM05080, Respondent was convicted on his plea of guilty to violating Vehicle Code section 23152, subdivision (a), driving under the influence of drugs/alcohol; and Vehicle Code section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of .08 percent or more, misdemeanors.

b. As a result of the conviction, Respondent was granted informal probation for three years, and sentenced to serve five days in the Orange County Jail, to be served in the Cal Trans/Physical Labor program. The court further ordered Respondent to complete a three-month Level 1 First Offender Alcohol Program and a MADD Victim Impact Panel session, pay fees and fines, and comply with DUI probation terms. On November 12, 2009, Respondent's probation was revoked for failure to completed the MADD session. The court reinstated probation on the same terms. On April 29, 2010, the court revoked Respondent's probation for failure to pay restitution to the victim. The court reinstated Respondent's probation, and modified its terms to permit Respondent to complete eight days of community service in lieu of fines.

c. The facts that led to the convictions are that on the evening of March 21, 2009, a patrol officer with the Santa Ana Police Department was stopped at an intersection observing vehicular traffic when he observed a vehicle attempting to make a left turn. As the vehicle entered the intersection, it suddenly stopped to avoid colliding with another vehicle who had gone through the intersection against a red light. Respondent, who was the fourth vehicle in line, rear-ended the car in front of him. The officer had Respondent and the victim move to a parking lot

near the intersection where they were both interviewed. When speaking to Respondent, the officer observed that he had a distinct odor of alcohol on his person, and his eyes were bloodshot and watery. A second officer evaluated Respondent and conducted a series of field sobriety tests which Respondent was unable to complete as explained and demonstrated by the officer. Respondent provided two breath samples which were analyzed by the preliminary alcohol screening device with a BAC of 0.162 and 0.164 percent, respectively. Respondent was arrested for driving under the influence. During booking, Respondent provided a blood sample that was analyzed with a BAC of 0.14 percent.

FOURTH CAUSE FOR DENIAL OF APPLICATION

(Dangerous Use of Alcohol)

14. Respondent's application for licensure is subject to denial under section 480, subdivision (a)(3)(A) of the Code in that on March 21, 2009, as described in paragraph 13, above, he used alcohol in a manner that was dangerous and injurious to himself and to others when he drove a vehicle while impaired by alcohol and caused a collision, which would be a ground for discipline under section 4301, subdivision (h) of the Code for a registered pharmacy technician.

FIFTH CAUSE FOR DENIAL OF APPLICATION

(September 28, 2011 Criminal Convictions for Making Criminal Threats & Vandalism on September 26, 2011)

15. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of crimes that are substantially related to the qualifications, duties, and functions of a registered pharmacy technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On September 28, 2011, in a criminal proceeding entitled *People of the State of California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number 11CM13414, Respondent was convicted on his plea of guilty to violating Penal Code section 422, making criminal threats (Count 1), and Penal Code section 594, subdivisions (a) and (b)(2)(A), vandalism under $400 (Count 2), misdemeanors.

b. As a result of the convictions, Respondent was granted informal probation for three years, and sentenced to serve 170 days in the Orange County Jail on Count 1, and 10 days in jail on Count 2, to be served concurrently. Respondent received pre-custody credit for three days. The court specifically denied Respondent's request to serve the time on work release, county parole, or community service. A protective order was issued for the victims. Respondent was further ordered to submit to a Fourth Amendment waiver, not use or possess any dangerous or deadly weapons, pay fines and fees, and pay restitution to the victim(s). At a hearing on April 9, 2014, the court ordered Respondent's probation revoked for failure to comply with its terms. Respondent's probation was reinstated of the same terms.

c. The facts that led to the convictions are that at approximately 2:38 in the morning on September 26, 2011, the Santa Ana Police Department was dispatched to a residence regarding a family disturbance. Witnesses stated that Respondent came home after a night of drinking and was playing his stereo in his room so loudly that it woke up everyone in the house. After confronting Respondent about turning the music down, he punched a family member's bedroom door and knocked it off the hinges. Respondent threatened family members that he was going to kill them. They knew he had a gun and were very afraid of him, so they called 9-1-1. When questioned by officers, Respondent denied having any weapons in his bedroom and gave officers permission to search his room. Inside a locked safe, the officers located a chrome revolver, three rounds of .38 ammunition, a blue bandana, and black gloves. Respondent was arrested for making criminal threats. After booking, Respondent told investigators that he purchased the revolver off the street for $200. The firearm was not registered.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(April 9, 2014 Criminal Conviction for Hit & Run Driving on February 2, 2014)

16. Respondent's application for licensure is subject to denial under section 480, subdivisions (a)(1) and (a)(3)(A) of the Code in that he was convicted of a crime that is substantially related to the qualifications, duties, and functions of a registered pharmacy technician, and would be a ground for discipline under section 4301, subdivision (l) of the Code for a registered pharmacy technician. The circumstances are as follows:

a. On April 9, 2014, in a criminal proceeding entitled *People of the State of California vs. Israel Ebenezer Sowa*, in Orange County Superior Court, case number 14CM03000, Respondent was convicted on his plea of guilty to violating Vehicle Code section 20002, subdivision (a), hit and run with property damage, a misdemeanor.

b. As a result of the conviction, Respondent was granted informal probation for three years, and sentenced to serve 10 days in the Orange County Jail, or 10 days in the CalTrans physical labor. Respondent was further ordered to pay fees, fines, and restitution to the victim.

c. The facts that led to the conviction are that at approximately 3:00 in the morning on February 2, 2014, the Santa Ana Police Department was dispatched to investigate a hit and run in a residential neighborhood. The officers observed a Dodge Ram truck parked along the curbline. A Toyota Camry was lodged under the truck's rear fender and had major front end damage. The Camry was registered to Respondent's mother, however, when they went to the registered address a block from the collision, no one answered the door. A witness stated that she immediately after the collision, she saw two males running away from the area. The next day, a family member advised the Santa Ana Police Department that Respondent was the driver. On February 6, 2014, Respondent went to the police department and admitted he had been driving the Camry and caused the collision. Respondent told the officer that he had no valid reason for leaving the scene except that he panicked and his first instinct was to run home, which was only a block away. Respondent was arrested and cited for hit and run driving with property damage.

SEVENTH CAUSE FOR DENIAL OF APPLICATION

(Dishonesty – Making a False Statement of Fact Required to Be Revealed on Application)

17. Respondent's application is subject to denial under Code section 480, subdivisions (a)(2), (a)(3)(A), and (d) in that he made false statements of fact required to be revealed in his application to the Board. Said conduct would be a ground for discipline under section 4301, subdivision (f) of the Code for a registered pharmacy technician. The circumstances are as follows:

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a. Respondent signed his Pharmacy Technician Application certifying under penalty of perjury under the laws of the State of California that his answers in the application were true and correct. He dated the application April 7, 2014, however, the Board did not receive the application until May 1, 2014. Along with his Application, Respondent enclosed an "Affidavit of Completed Coursework or Graduation for Pharmacy Technician" from Everest College dated April 15, 2014.

b. Question Number 7 of the Application asked:

> Have you ever been convicted of any crime in any state, the USA and its territories, military court or foreign country?
>
> Check the box next to "YES" if you have ever been convicted or plead guilty to any crime. "Conviction" includes a plea of no contest and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions, misdemeanor, and felonies. You do not need to report a conviction for an infraction with a fine of less than $300 unless the infraction involved alcohol or controlled substances. You must, however, disclose any convictions in which you entered a plea of no contest and any convictions that subsequently set aside pursuant or deferred pursuant to sections 1000 or 1203.4 of the Penal Code.
>
> Check the box next to "NO" if you have not been convicted of a crime.
>
> You may wish to provide the following information in order to assist in the processing of your application: descriptive explanation of the circumstances surrounding the conviction (ie. Dates and locating of incident and all circumstances surrounding the incident.) If documents were purged by the arresting agency and/or court, a letter of explanation from these agencies is required.
>
> Failure to disclose a disciplinary action or conviction may result in the license being denied or revoked for falsifying the application. Attach additional sheets if necessary.

c. In response to the question, Respondent checked the box "YES." Respondent declared the following convictions: (1) *People vs. Sowa*, June 13, 2008, Orange County Superior Court, case number 08CM00916 (paragraph 12, above); (2) *People vs. Sowa*, June 10, 2009, Orange County Superior Court, case number 09CM05080 (paragraph 13, above); (3) *People vs. Israel Ebenezer Sowa*, September 28, 2011, Orange County Superior Court, case number 11CM13414 (paragraph 15, above).

d. Respondent failed to declare his February 6, 2008 conviction for felony vandalism (paragraph 11, above) even though the conviction met all criteria for disclosure. The Board also alleges that Respondent dated his Application April 7, 2014 so as to avoid declaring

his April 9, 2014 criminal conviction for hit and run driving, as described in paragraph 16, above. Because Respondent's Application package included a document dated April 15, 2014, and because the Board did not receive Respondent's application package until May 1, 2014, the Board alleges that Respondent's failure to declare the April 9, 2014 conviction on his Application was intentional, and demonstrates dishonesty and deceit.

PRAYER

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

1. Denying the application of Israel Ebenezer Sowa for a Pharmacy Technician Registration;

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

DATED: 7/8/15

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

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