

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

In the Matter of the Accusation Against:

JOVEN PONCE ALVAREZ

Pharmacy Technician License
No. TCH 121288,

Respondent.

Case No. 5589

OAH No. 2016061263

DECISION AND ORDER

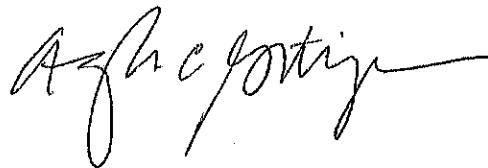
The attached Proposed Decision of the administrative law judge is hereby adopted as the decision of the California State Board of Pharmacy in the above-entitled matter, except that, pursuant to the provisions of Business and Professions Code section 495 and Government Code section 11517, subdivision (c)(2)(B), the Order is modified to read as follows:

1. Respondent Joven Ponce Alvarez, Pharmacy Technician License Number TCH 121288, is hereby publicly reprovved. Respondent is required to report this reprovval as a disciplinary action.
2. Respondent shall pay to the Board its reasonable enforcement costs in the amount of \$800. Respondent shall make these payments in accordance with a payment plan to be approved by the Board or its designee.

This Decision shall become effective at 5:00 p.m. on March 9, 2017.

It is so ORDERED on February 7, 2017.

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



By

Amy Gutierrez, Pharm.D.
Board President

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BOARD OF PHARMACY
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STATE OF CALIFORNIA

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Pharmacy Technician Registration No.
TCH 121288

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PROPOSED DECISION

Administrative Law Judge Juliet E. Cox, State of California, Office of Administrative Hearings, heard this matter on October 17, 2016, in Oakland, California.

Maretta Ward, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy (Board).

Respondent Joven Ponce Alvarez was present at the hearing and represented himself.

The matter was submitted on October 17, 2016.

FACTUAL FINDINGS,

1. On February 21, 2012, the Board issued Pharmacy Technician Registration No. TCH 121288 to respondent Joven¹ Ponce Alvarez. As of August 19, 2015, respondent's registration was in full force and effect, and was scheduled to expire March 31, 2017.

2. On February 5, 2016, acting in her official capacity as Executive Officer of the Board, complainant Virginia Herold issued an accusation seeking revocation or suspension of respondent's pharmacy technician registration. Complainant alleges that respondent acted unprofessionally on February 16, 2015, when he drove his car while under the influence of alcohol. Respondent requested a hearing on the accusation.

¹ Complainant's certification of respondent's licensure gives his proper name both as "Jovan" and as "Joven." Respondent confirmed at the hearing that "Joven" is correct.

Basis for Proposed Discipline

3. On February 16, 2015, shortly after 2:00 a.m., three California Highway Patrol (CHP) officers stopped respondent on a Bay Area freeway after having observed his car weaving from lane to lane. The officers arrested respondent because he showed signs of intoxication, and because he readily admitted to having drunk cognac before setting out in his car. Breath samples showed respondent's blood alcohol concentration to be 0.13 percent. He spent the rest of the night in jail, and was released the next day.

4. The People charged respondent with a misdemeanor violation of Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol concentration of 0.08 percent or more). On June 2, 2015, in Alameda County Superior Court, respondent pled no contest to and was convicted of this crime.

5. The court placed respondent on three years' unsupervised probation and ordered him to serve three days in jail, with one day's credit for the time he spent in jail after his arrest. The court also ordered respondent to complete a three-month first offender drinking driver program and to attend Narcotics Anonymous meetings twice per week for three months. Finally, the court ordered respondent to pay a fine.

6. Respondent completed his jail sentence by participating in a weekend supervised work alternative program in which he worked with a crew to clean and maintain a park in Hayward. Respondent has complied with all other terms of his probation as well, and will remain on probation until June 2018.

Additional Evidence

7. After arresting respondent, the CHP officers inventoried respondent's car in preparation for towing it. One of the officers found an unlabeled plastic bottle in the car's trunk containing two capsules that respondent said probably were MDMA (3,4-methylenedioxy-methamphetamine, a drug also known as "Ecstasy" or "molly"). Although the evidence established that respondent has socialized with people who use MDMA recreationally, it did not establish that the capsules really contained MDMA,² that they were respondent's, or that respondent knew they were in the trunk before the officer found them.

8. Respondent testified that he is not and never has been dependent on alcohol, and that although he formerly enjoyed socializing in bars he had never driven while intoxicated before the night of his arrest. He explained that on that night, he had drunk much more alcohol than usual after learning that a man he had trusted as a close friend for nearly 20 years had betrayed his confidence. He views the entire evening as a humiliating aberration that he does not wish to repeat.

² One of the CHP officers performed a chemical test of the capsules' contents on the scene, but the test did not confirm whether or not the substance was MDMA.

9. Respondent has no criminal history other than his arrest in February 2015 and the conviction that resulted from it.

10. Respondent realized after his arrest that he needed to develop closer and more rewarding personal relationships, and to cultivate stronger skills for managing stress and negative emotions. He has adopted a daily meditation practice and exercise regimen, and has increased the amount of time he spends in outdoor recreation. He also has recommitted himself to strong family relationships, and has distanced himself from some social acquaintances who he did not feel were good for him. These changes have made respondent feel happier and more resilient than he did in early 2015.

11. Respondent graduated from high school in 2005. He sampled several courses of study at Evergreen Valley College before deciding to become a pharmacy technician. Respondent is professionally ambitious, and is committed to his career in pharmacy.

12. Respondent has worked since March 2013 for a compounding pharmacy that produces primarily ophthalmic injectable and topical medications. During the time respondent has worked for his present employer, the company has grown from being a local compounding pharmacy to being a manufacturing facility licensed by the federal Food and Drug Administration that employs more than 100 people. Respondent started as an entry-level technician and now serves as one of the company's key sterile compounding technicians. The day after the hearing, respondent was scheduled to interview with his current employer for a promotion that would make him one of three pharmacy technicians supervising a production staff of 20 people.

13. Respondent told his direct supervisor, Wallace Tan, about his arrest immediately after it occurred. Tan has mentored respondent personally and professionally since that time. Tan provided a reference letter praising respondent's personal and professional growth and attesting to respondent's strong performance at work, both as a production technician and as a trainer and supervisor for newer pharmacy technicians.

14. Paul Yamamoto, Vice President of Operations for respondent's employer, also provided a reference letter for respondent. Yamamoto is aware of respondent's criminal conviction, and is also aware that respondent's direct supervisors and co-workers have high regard for respondent's work. Yamamoto knows that the Board might discipline respondent's pharmacy technician license, but urges the Board to "impose appropriate punishment that will hold [respondent] accountable for his actions while allowing him to continue with his professional development at work and personal responsibilities at home."

15. Respondent has participated in and has volunteered for several community fundraising sports events since his conviction. He enjoys such work and intends to volunteer for more.

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16. Respondent's interactions with the arresting CHP officers on February 16, 2015, and with the Board, were forthright and responsible. Likewise, his testimony at the hearing was candid and credible. Respondent understands that the Board's responsibility is to protect the public and that a licensee's misuse of alcohol or drugs is reason for concern about the licensee's fitness to practice.

Costs

17. The California Department of Justice, Office of the Attorney General, has charged the Board \$5,237.50 for prosecution costs on this matter. The Board's claim for these costs is supported by a declaration that complies with California Code of Regulations, title 1, section 1042. Complainant presented no evidence regarding the Board's investigation costs.

18. The total enforcement cost amount is unreasonable given the matter's lack of complexity. A reasonable cost is \$800.

LEGAL CONCLUSIONS

1. The Board may discipline a licensee for "unprofessional conduct," such as "conviction of a crime substantially related to the qualifications, functions, and duties of a" pharmacy technician. (Bus. & Prof. Code, § 4301, subd. (i).) A crime relates substantially to a pharmacy technician's licensed duties if "to a substantial degree it evidences present or potential unfitness . . . to perform the functions authorized by [the] license . . . in a manner consistent with the public health, safety, or welfare." (Cal. Code Regs., tit. 16, § 1770.) The crime described in Findings 3 and 4 does not evidence respondent's present unfitness to perform his licensed duties, but it raises questions as to his potential unfitness. Cause exists under this statute to discipline respondent's license.

2. Unprofessional conduct also includes "use of . . . alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself . . . or to the public." (Bus. & Prof. Code, § 4301, subd. (h).) By reason of the matters set forth in Finding 3, cause exists under this statute to discipline respondent's license.

3. As set forth in Findings 8 and 9, the evidence did not establish that respondent's arrest on February 16, 2015, was related to any habitual alcohol abuse. Further, as set forth in Findings 11 through 14, respondent has been successful thus far in his pharmacy career; his supervisors not only have confidence in him but are willing, as noted in Finding 14, to continue employing him if the Board permits them to do so. Public protection is the chief purpose of the Board's disciplinary authority (Bus. & Prof. Code, § 4313), but public protection in this case does not require the Board to prevent respondent from working as a pharmacy technician.

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4. The Board has established criteria against which to evaluate a licensee's rehabilitation after commission of a crime or another form of unprofessional conduct. (Cal. Code Regs., tit. 16, § 1769, subd. (c).) By reason of the matters set forth in Findings 6, 9, 10, 13, 14, 15, and 16, respondent meets most of these criteria. As set forth in Findings 3 and 7, however, he has demonstrated some disregard for laws governing use of alcohol and other drugs; and as set forth in Finding 6, he remains on criminal probation. A period of probation for respondent's pharmacy technician license is appropriate in this matter as well.

5. A licensee found to have committed a violation of the licensing act may be required to pay the Board the reasonable costs of the investigation and enforcement of the case. (Bus. & Prof. Code, § 125.3.)

In *Zuckerman v. State Bd. of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth the standards by which a licensing board or bureau must exercise its discretion to reduce or eliminate cost awards to ensure that the board or bureau does not deter licensees with potentially meritorious claims from exercising their administrative hearing rights. The court held that a licensing board requesting reimbursement for costs relating to a hearing must consider the licensee's "subjective good faith belief" in the merits of his position and whether the licensee has raised a "colorable challenge" to the proposed discipline. (*Id.*, at p. 45.) The board also must consider whether the licensee will be "financially able to make later payments." (*Ibid.*) Lastly, the board may not assess full costs of investigation and enforcement when it has conducted a "disproportionately large investigation." (*Ibid.*)

All these matters have been considered. Assessment against respondent of the Board's reasonable enforcement costs of \$800, as set forth in Finding 18, will reimburse the Board fairly without unduly burdening respondent's exercise of his hearing rights.

ORDER

Pharmacy Technician Registration No. TCH 121288, issued to respondent Joven Ponce Alvarez, is revoked. The revocation is stayed, however, and respondent is placed on probation for three years, upon the following terms and conditions:

1. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one year shall be considered a violation of probation.

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During suspension, respondent shall not enter any pharmacy area or any portion of any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within 72 hours of such occurrence:

- a. an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;
- b. a plea of guilty or *nolo contendere* in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- c. a conviction of any crime; or
- d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

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3. Report to the Board

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

4. Interview with the Board

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

5. Cooperate with Board Staff

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

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5589 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

- a. Within 30 days of the effective date of this decision, and within 15 days of undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in case number 5589 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

- b. If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5589 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.
- c. Furthermore, within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in case number 5589 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

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

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician registration is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the Board its reasonable costs of prosecution in the amount of \$800. Respondent shall make these payments in accordance with a payment plan to be approved by the Board. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board's costs of prosecution.

8. Probation Monitoring Costs

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

9. Status of Registration

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

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

10. Registration Surrender While on Probation/Suspension

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

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

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

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

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

12. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 80 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, *i.e.*, the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 80 hours per calendar month in California, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

"Cessation of work" means calendar month during which respondent is not working for at least 80 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 80 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

13. Violation of Probation

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

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

of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

14. Completion of Probation

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

DATED: November 7, 2016

DocuSigned by:
Juliet E. Cox
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JULIET E. COX
Administrative Law Judge
Office of Administrative Hearings

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

10
11 In the Matter of the Accusation Against:

Case No. 5589

12 **JOVEN PONCE ALVAREZ**
2049 Villagetree Drive
13 San Jose, CA 95791

A C C U S A T I O N

14 Pharmacy Technician Registration No. TCH
121288
15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy.
21 2. On or about February 21, 2012, the Board issued Pharmacy Technician Registration
22 Number TCH 121288 to Joven Ponce Alvarez (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on March 31, 2017, unless renewed.

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JURISDICTION

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

4 4. Section 4300(a) of the Code provides every license issued by the Board may be
5 suspended or revoked.

6 5. Section 4300.1 of the Code states:

7 "The expiration, cancellation, forfeiture, or suspension of a board-issued license by
8 operation of law or by order or decision of the board or a court of law, the placement of a license
9 on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board
10 of jurisdiction to commence or proceed with any investigation of, or action or disciplinary
11 proceeding against, the licensee or to render a decision suspending or revoking the license."

12 6. Section 4301 of the Code states:

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

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

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

25
26 (l) The conviction of a crime substantially related to the qualifications, functions, and duties
27 of a licensee under this chapter.

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

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

8 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
9 revoke a license on the ground that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions, or duties of the business or profession for which the
11 license was issued.

12 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
13 administrative law judge to direct a licentiate found to have committed a violation or violations of
14 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
15 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
16 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
17 included in a stipulated settlement.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Conviction of Substantially Related Crime)

3 10. Respondent is subject to disciplinary action under section 4301(I) and section 490 of
4 the Code, by reference to California Code or Regulations, title 16, section 1770, for the
5 conviction of a substantially related crime, in that on or about June 2, 2015, in the Alameda
6 County Superior Court criminal case entitled *People v. Joven Ponce Alvarez*, Case No. 150919-3,
7 Respondent was convicted by plea of no contest of violating Vehicle Code section 23152(b),
8 (driving with a blood alcohol level in excess of .08%), a misdemeanor. The circumstances are as
9 follows:

10 a. On or about February 16, 2015, at approximately 2:12 a.m. California Highway Patrol
11 Officers observed Respondent's vehicle weaving in traffic. An enforcement stop was initiated and
12 the vehicle was pulled over. Upon contact with Respondent, the officers observed signs of
13 intoxication including red/watery eyes, slurred speech and the odor of an alcoholic beverage
14 emanating from the vehicle. Respondent also stated that he had consumed alcohol prior to
15 driving. Respondent was unable to perform Field Sobriety Tests explained and demonstrated by
16 the officers. Respondent agreed to a preliminary alcohol screening (PAS) which showed a breath
17 alcohol content of 0.123% at 2:26 a.m. and 0.129% at 2:28 a.m.

18 b. A subsequent chemical breath test showed a blood alcohol content of .13% at 3:13
19 a.m. and again at 3:16 a.m.

20 c. Respondent was sentenced as follows: Three (3) years probation, one (1) day in jail,
21 two (2) days of service in the Alameda County Sheriff's Weekend Alternative Program, enroll
22 and complete a three (3) month First Offender DUI program, attend two (2) Narcotics
23 Anonymous meetings per week for three (3) months and required to pay a fine of \$390.

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1 SECOND CAUSE FOR DISCIPLINE

2 (Self-Administration of Controlled Substance and/or Alcohol)

3 11. Respondent is subject to discipline under section 4301, subdivision (h) and/or 4301
4 subdivision (j) of the Code, in that Respondent, as described in paragraph 10 above, administered
5 alcohol to an extent or in a manner as to be dangerous to himself and/or the public.
6

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct)

9 12. Respondent is subject to discipline under section 4301 of the Code, in that
10 Respondent, as described in paragraph 10 above, engaged in unprofessional conduct.
11

12 PRAYER

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

- 15 1. Revoking or suspending Pharmacy Technician Registration Number TCH 121288,
16 issued to Joven Ponce Alvarez;
- 17 2. Ordering Joven Ponce Alvarez to pay the Board the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.
21

22
23 DATED: 2/5/16

24 Virginia Herold

25 VIRGINIA K. HEROLD
26 Executive Officer
27 California State Board of Pharmacy
27 State of California
28 Complainant