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

In the Matter of the Accusation Against:

Case No. 5651

**BRANDON EUGENE HIGHTOWER** P.O. Box 1036

Helendale, CA 92342

Pharmacy Technician Registration No. TCH

135312

Respondent.

## **DECISION AND ORDER**

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective at 5:00 p.m. on July 8, 2016.

It is so ORDERED on June 8, 2016.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

Amy Gutierrez, Pharm.D. Board President

1 2 3 4 5 6 7	KAMALA D. HARRIS Attorney General of California LINDA L. SUN Supervising Deputy Attorney General LINDA L. SUN Supervising Deputy Attorney General State Bar No. 207108 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-6375 Facsimile: (213) 897-2804 Attorneys for Complainant	
8	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
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11	In the Matter of the Accusation Against:	Case No. 5651
12	BRANDON EUGENE HIGHTOWER P.O. Box 1036	
13	Helendale, CA 92342 Pharmacy Technician Registration No. TCH	STIPULATED SURRENDER OF LICENSE AND ORDER
14	135312	DIOLIGIPATO ONDER
15	Respondent.	
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17	IT IS HEREBY STIPULATED AND AGI	REED by and between the parties to the above-
18	entitled proceedings that the following matters are true:	
19	PAR	TIES
20	1. Virginia Herold (Complainant) is the	Executive Officer of the Board of Pharmacy.
21	She brought this action solely in her official capa	
22	D. Harris, Attorney General of the State of Califo	ornia, by Linda L. Sun, Supervising Deputy
23	Attorney General.	
24	2. Brandon Eugene Hightower (Respor	ident) is representing himself in this proceeding
25	and has chosen not to exercise his right to be represented by counsel.	
26	3. On or about October 28, 2013, the Board of Pharmacy issued Pharmacy Technician	
27	Registration No. TCH 135312 to Brandon Eugene Hightower (Respondent). The Pharmacy	
28	Technician Registration expired on August 31, 2	2015, and has not been renewed.
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### **JURISDICTION**

4. Accusation No. 5651 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on March 18, 2016. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 5651 is attached as Exhibit A and incorporated by reference.

## **ADVISEMENT AND WAIVERS**

- 5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 5651. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

## **CULPABILITY**

- 8. Respondent admits the truth of each and every charge and allegation in Accusation No. 5651, agrees that cause exists for discipline and hereby surrenders his Pharmacy Technician Registration No. TCH 135312 for the Board's formal acceptance.
- 9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

### **CONTINGENCY**

10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may

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communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

- 11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including Portable Document Format (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.
- 12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

#### ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. TCH 135312, issued to Respondent Brandon Eugene Hightower, is surrendered and accepted by the Board of Pharmacy.

- 1. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board of Pharmacy.
- 2. Respondent shall lose all rights and privileges as a pharmacy technician in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

- 4. Respondent understands and agrees that if he ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent may not apply for any license, permit, or registration from the Board for three (3) years from the effective date of this Decision. Respondent stipulates that should he apply for any license from the Board on or after the effective date of this Decision, all allegations set forth in the Accusation shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the application. Respondent shall satisfy all requirements applicable to that license as of the date the application is submitted to the Board, including, but not limited to certification by a nationally recognized body prior to the issuance of a new license. Respondent is required to report this surrender as disciplinary action.
- 5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$625.00 prior to issuance of a new or reinstated license.
- 6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 5651 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

## ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4-15-16

BRANDON EUGENE HIGHTOWER Respondent

1	ENDORSEMENT
2	The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted
3	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.
4	Dated: Respectfully submitted,
5	Kamala D. Harris
6	Attorney General of California LINDA L. SUN
7	Supervising Deputy Attorney General
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9	LINDA L. SUN Supervising Deputy Attorney General
10	Supervising Deputy Attorney General  Attorneys for Complainant
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Exhibit A

Accusation No. 5651

1 2 3 4 5 6	KAMALA D. HARRIS Attorney General of California LINDA K. SCHNEIDER Senior Assistant Attorney General LINDA L. SUN Supervising Deputy Attorney General State Bar No. 207108 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 Telephone: (213) 897-6375 Facsimile: (213) 897-2804 Attorneys for Complainant	
7 8 9 10	BEFORE THE BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
11	In the Matter of the Accusation Against: Case No. 5651	
12	BRANDON EUGENE HIGHTOWER P.O. Box 1036  A C C U S A T I O N	
13	Helendale, CA 92342	
14	Pharmacy Technician Registration No. TCH 135312	
15 16	Respondent.	
17	Complainant alleges:	
18	PARTIES	
19	1. Virginia Herold (Complainant) brings this Accusation solely in her official	
20	capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer	
21	Affairs,	
22	2. On October 28, 2013, the Board issued Pharmacy Technician Registration	
23	Number TCH 135312 to Brandon Eugene Hightower (Respondent). The Pharmacy Technician	
24	Registration expired on August 31, 2015, and has not been renewed.	
25	JURISDICTION	
26	3. This Accusation is brought before the Board under the authority of the following	
27	laws. All section references are to the Business and Professions Code (Code) unless otherwise	
28	indicated.	
}	1	

(BRANDON EUGENE HIGHTOWER) ACCUSATION

4. Code section 4300, subdivision (a) provides that every license issued by the Board may be suspended or revoked.

## 5. Code section 4300.1 states:

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

#### STATUTORY PROVISIONS

#### 6. Code section 482 states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- -(b)-Considering suspension-or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

## 7. Code 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.
- (1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The

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

## **REGULATORY PROVISIONS**

- 8. California Code of Regulations, title 16, section 1769, states:
- (b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:
  - (1) Nature and severity of the act(s) or offense(s).
  - (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.
  - (5) Evidence, if any, of rehabilitation submitted by the licensee.
- 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.

#### COST RECOVERY

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations

of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

## FIRST CAUSE FOR DISCIPLINE

# (Sep. 29, 2015 Conviction for Driving with a BAC of .08% or More on March 12, 2015)

- 11. Respondent has subjected his Pharmacy Technician Registration to discipline under Code sections 490 and 4301, subdivision (I), in that he was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered pharmacy technician. The circumstances are as follows:
- a. On September 29, 2015, in a criminal proceeding entitled *The People of the State of California v. Brandon Eugene Hightower*, in the San Bernardino County Superior Court, San Bernardino Justice Center, Court Case Number TSB1501382, Respondent was convicted on his plea of *nolo contendere* to violating Vehicle Code (VC) section 23152, subdivision (b), driving with a blood alcohol concentration (BAC) of 0.08 percent or more, a misdemeanor. A misdemeanor charge for violation of VC section 23152, subdivision (a), driving under the influence (DUI) of alcohol, was dismissed under a plea bargain.
- b. As a result of the conviction, on September 29, 2015, Respondent was sentenced to serve two days in a San Bernardino County Jail Facility, with credit for two days served. Respondent was granted 36 months probation under standard alcohol conditions and ordered to pay fines, fees, restitution, and assessments. Respondent was also ordered to attend and satisfactorily complete a nine-month DUI Program.
- c. The facts that led to the conviction are that on March 12, 2015, Respondent was involved in a traffic collision while driving westbound on state route SR-210, west of Little Mountain Drive in San Bernardino, California. Responding officers from the San Bernardino California Highway Patrol (CHP) area office found Respondent standing in the center median of the scene of the accident. Upon contact with Respondent, a CHP officer immediately smelled alcohol emitting from Respondent's breath and body. The officer also

observed Respondent's bloodshot eyes, slurred speech, and sway from side to side. Respondent admitted to drinking Bud Light and a dose of Xanax and Prozac earlier in the day. Respondent failed to perform a series of field sobriety tests as explained and demonstrated. Respondent provided breath samples for the preliminary alcohol screen, which indicated a BAC of ,253 percent and .235 percent. Respondent was arrested and transported to and booked at the Central Detention Center, where he provided a blood sample.

## SECOND CAUSE FOR DISCIPLINE

## (Unprofessional Conduct - Dangerous Use of Drugs and Alcohol)

12. Respondent has subjected his Pharmacy Technician Registration to discipline under Code section 4301, subdivision (h) in that on March 12, 2015, he used drugs and alcohol to the extent and in a manner that was dangerous and injurious to himself and to the public, as described in paragraph 11, above, which is incorporated by reference.

#### 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. Revoking or suspending Pharmacy Technician Registration Number TCH 135312, issued to Brandon Eugene Hightower;
- 2. Ordering Brandon Eugene Hightower to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
  - 3. Taking such other and further action as deemed necessary and proper.

DATED: 3/7/16

VIRGINIA HEROLD Executive Officer

Board of Rharmacy

Department of Consumer Affairs

State of California Complainant

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