1 2 3 4 5 6 7 8 9	BOARD OF DEPARTMENT OF O	RE THE PHARMACY CONSUMER AFFAIRS CALIFORNIA
10	In the Matter of the Accusation Against:	Case No. 5618
11 12	DEAN RUSSELL SPENCER, JR. 1301 4th Street	
13	Napa, CA 94559	ACCUSATION
14	Pharmacy Technician Registration No. TCH 100459	
15	Respondent.	
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17	Complainant alleges:	· ————————————————————————————————————
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- 4. Section 118, subdivision (b), of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
 - 5. Section 125.9 of the code states:
- a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.
 - (b) The system shall contain the following provisions:
- (5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.
 - 6. Section 4300 of the Code states:
 - "(a) Every license issued may be suspended or revoked.
- "(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
 - "(1) Suspending judgment.
 - "(2) Placing him or her upon probation.
 - "(3) Suspending his or her right to practice for a period not exceeding one year.
 - "(4) Revoking his or her license.

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

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7. 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:

. . .

"(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.

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REGULATORY PROVISIONS

8. California Code of Regulations Title 16, Section 1775.1 states, in pertinent part, that the failure of a person or entity cited to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action by the board.

COSTS

9. Section 125.3 of the Code states, 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.

FACTUAL BACKGROUND

- 10. On or about January 26, 2013, Respondent was arrested for a violating Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer. Respondent resisted/obstructed a peace officer in Vallejo, California.
- 11. On or about May 17, 2013, Respondent was arrested for violations of Penal Code Section 273.5, inflicting corporal injury on spouse/cohabitant and Penal Code Section 236, false imprisonment. Charges were filed but dismissed.
- 12. On October 22, 2013, Respondent was arrested for violating Penal Code Section 415(1), disturbing the peace by fighting, and Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer. Respondent challenged another to a fight in public and resisted arrest in Napa, California.
- 13. On or about December 6, 2013, Respondent was arrested for violating Penal Code Section 602(0)(1), refusing a police officer's request to leave private property. Respondent refused to leave the Napa County Homeless Shelter when instructed by officers to do so. Charges were filed but dismissed.
- 14. On or about December 23, 2013, Respondent was arrested for violating Penal Code Section 242, battery. Respondent was in a fight at the Hope Center in Napa where he battered another person.

- 15. On or about February 26, 2014, in Napa County Superior Court Case No. CR 169019, Respondent was convicted of violating Penal Code Section 242/243(a), Battery. The circumstances leading to the conviction are described in paragraph 14, above.
- 16. On or about February 26, 2014, in Napa County Superior Court Case No. CR 168680, Respondent was convicted of violating Penal Code Section 415(1), disturbing the peace by fighting, and Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer. The circumstances leading to the conviction are described in paragraph 12, above.
- 17. On or about March 14, 2014 Respondent renewed his pharmacy technician license and indicated on his renewal application form that he had not been convicted of any crime since his last renewal in 2011. This was not true.
- 18. On or about March 24, 2014, In Solano County Superior Court Case No VCR217067, Respondent was convicted of violating Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer, and sentenced to a three year probations period. The facts giving rise to the conviction are described in paragraph 10, above.
- 19. On or about April 18, 2014, Respondent was arrested for violating Penal Code Section 21310, possession of a dirk or dagger, and two counts of violating Penal Code Section 1203.2, violating probation. Napa police found Respondent in possession of a dirk or dagger. Respondent was also in possession of alcohol in violation of his probationary terms.
- 20. On or about April 22, 2014, In Napa County Superior Court Case No. CR170540, a criminal complaint was filed against Respondent alleging Respondent violated Penal Code Section 21310, possession of a dirk or dagger. The circumstances leading the charges are described in paragraph 19, above.
- 21. On or about August 1, 2014, the Board issued a Citation No. CI 2012 56917 to Respondent. The citation imposed a fine in the amount of \$300.00. That Citation is now final. Respondent failed to pay the citation. The citation is based in part on the facts described in paragraphs 11, 13-15, and 17, above.
- 22. On or about November 4, 2014, Respondent was arrested for violating Penal Code Section 148(a)(1), obstructing/resisting a public/peace officer; Penal Code Section 602.1(a),

- trespassing; Penal Code Section 21510(b), possession of a switchblade; Penal Code Section 69, resisting an executive officer; and two counts of Penal Code Section 1203.2, violation of probation. Respondent refused to leave a Walmart after being requested to do so by a Walmart manager. Respondent was in possession of a dirk or dagger.
- 23. On or about November 6, 2014, In Napa County Superior Court Case no. CR173297, a criminal complaint was filed against Respondent alleging Respondent twice violated Penal Code Section 69, resisting an executive officer, and Penal Code Section 2131, possession of a dirk or dagger.
- 24. On or about April 2, 2015, Respondent was ordered to be committed to the State Department of Mental Health, Napa State Hospital, or other facility designated by the California Department of Mental Health, for a period not to exceed three years, or until mental competency has been restored. The Court granted the request that the defendant submit to involuntary medications. This order was in cases CR173297 and CR170540.
- 25. On or about August 13, 2015, In Napa County Superior Court Case no. CR173297, Respondent was convicted of violating Penal Code Section 69, resisting an executive officer. The circumstances leading to the conviction are described in paragraph 22, above.

FIRST CAUSE FOR DISCIPLINE

(Failure to comply with citation)

26. Respondent is subject to disciplinary action under section 125.9 of the Code in conjunction with California Code of Regulations, Title 16, section 1775.1 in that respondent failed to pay a citation issued by the Board within 30 days. The circumstances are described in paragraph 21, above.

SECOND CAUSE FOR DISCIPLINE

(Convictions)

27. Respondent is subject to disciplinary action under section 4301, subsection (1), of the code in that respondent was convicted of multiple crimes that are substantially related to the duties, functions, or qualifications of a pharmacy technician. The circumstances are described in paragraphs 10, 12, 16, 18, and 22-25.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondent is subject to disciplinary action under section 4301 of the code in that he was involved in unprofessional conduct. The circumstances are described in paragraphs 10, 12, 16, 18, and 22-25, above.

DISCIPLINARY CONSIDERATIONS

29. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about August 1, 2014, the Board issued a Citation No. CI 2012 56917 to Respondent. The citation imposed fine in the amount of \$300.00. That Citation is now final. The citation is based in part on the facts described in paragraphs 11, 13-15, and 17, above.

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:

- Revoking or suspending Pharmacy Technician Registration Number TCH 100459, 1. issued to Dean Russell Spencer, Jr.;
- 2. Ordering Dean Russell Spencer 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;
 - 3. Taking such other and further action as deemed necessary and proper.

12/21/15

VIRGIN Executive Officer

Board of Pharmacy Department of Consumer Affairs

State of California

Complainant

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