

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

In the Matter of the Accusation Against:

ROBERT CHOU
1642 Yosemite Avenue
San Francisco, CA 94124

Pharmacy Technician License No. 17546

Respondent.

Case No. 2738

OAH No. N2005040042

PROPOSED DECISION

On July 6, 2005, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Hannah Hirsch Rose, Deputy Attorney General, represented Complainant Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent Robert Chou was present for the hearing, but he was not otherwise represented.

On July 6, 2005, the record was closed and the matter was deemed submitted.

FACTUAL FINDINGS

1. On June 8, 2004, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs, State of California, made and issued the Accusation against Respondent Robert Chou.

License Information

2. On October 30, 1995, the Board issued Pharmacy Technician License number TCH 17546 to Robert Chou (Respondent). The license issued to Respondent was in full force and effect at all times relevant to the matters raised in the Accusation, dated June 8, 2004.

History of Past Disciplinary Action

3. On March 16, 2000, the Decision and Order of the Board, which adopted the proposed decision of an OAH¹ administrative law judge, became effective. The Board's Decision and Order revoked Respondent's pharmacy technician license, but the Decision's Order stayed the revocation and placed Respondent's Pharmacy Technician License No. TCH 17546 on probation for a term of three years, subject to certain terms and conditions. The probation's terms and conditions included requirements that: (i) Respondent was to be suspended from working as a pharmacy technician until he passed an examination and he received certification by the Pharmacy Technician Certification Board. Also he was required to provide the Board with proof of such certification. Those terms and conditions were set out under the Decision's Order as term and condition number one, paragraph one; (ii) During suspension Respondent was not to enter any pharmacy as a worker and he could not perform duties of a pharmacy technician. That term and condition was set out under the Decision's Order as term and condition number one, paragraphs two and three; (iii) Respondent was to notify all of his employers of the Board's Decision's Order. That term and condition was set out under the Decision's Order as term and condition number seven, paragraph one; and (iv) Respondent was to prompt his employer to report to the Board an acknowledgment of having received and read the Board's Decision. That term and condition was set out under the Decision's Order as term and condition number seven, paragraph two.

4. The Board's Decision in Case No. 2144 along with the proposed decision under OAH No. N1999070550 are attached hereto as Attachment "A," and the contents therein are incorporated herein by reference.

Violation of Terms and Conditions of Probation

5. After March 16, 2000, when the Board stayed revocation of his pharmacy technician license, Respondent omitted to perform obligations and committed acts that show his violation of the terms and conditions of probation of his license. Complainant called two witnesses who each offered credible and persuasive evidence:

a. Ms Joan E. Coyne, Supervising Inspector of the Board, appeared at the hearing. The evidence she offered was compelling evidence.

At the hearing of this matter, Inspector Coyne expressed her detailed knowledge of Respondent's dereliction of the terms and conditions placed on Respondent by the Board's Decision and Order, which was effective on March 16, 2000.

¹ Respondent participated in formal administrative adjudication proceedings on October 7, 1999, where he was represented by Richard A. Friedling, Attorney at Law, of San Francisco. The proposed decision issued on November 8, 1999.

On March 20, 2000, Inspector Coyne met with Respondent at her office in Sacramento. During that meeting, Respondent signed a declaration that set out that “[t]he terms and conditions of . . . probation [had] been fully explained to [him and] . . . [Respondent acknowledged] that [he] thoroughly [understood the] terms and conditions as set forth in the disciplinary action and that [his] failure to comply [could] result in further disciplinary action.”

The meeting in March 2000 was prompted by a letter, dated February 15, 2000, as dispatched by certified mail to Respondent. The letter in February 2000 informed Respondent, among other things that he was “suspended from the practice of pharmacy until [he was] certified by the Pharmacy Technician Certification Board to practice as a pharmacy technician . . . [and that during the] period [of suspension Respondent was not to] engage in the practice of pharmacy nor exercise any of the privileges of your license.” Also, the February 2000 letter instructed Respondent that he was “scheduled to appear before representatives of the Board . . . [for the] purpose of [explaining to him] the terms and conditions of . . . probation and [his] responsibilities as a probationer”

After the meeting in March 2000, Inspector Coyne learned in about 2003 that Respondent had omitted his responsibility and had engaged in acts that indicated his conscious and deliberate violation of the terms and conditions of probation.

b. Mr. Harry Lew appeared at the hearing of this matter. He provided credible and persuasive evidence.

Mr. Lew is a licensed pharmacist who is employed by Costco Warehouse. Beginning in March 2003, Mr. Lew became the pharmacist-in-charge of Costco Warehouse No. 147 Pharmacy in Foster City, County of San Mateo.

When Mr. Lew began work at the Costco Warehouse store in Foster City, Respondent was then working at the facility as a pharmacy technician. In mid-June 2003, when he reviewed records to assure Respondent’s compliance with renewal of a pharmacy technician license, Mr. Lew heard Respondent assert that he had sent the Board a license renewal application and license renewal fee, but he had not received confirmation of the renewal from the Board. In August 2003, Mr. Lew heard Respondent make an admission that he needed a certification for the proper validation of his license renewal. Thereafter, Mr. Lew telephoned the Board’s office to speak with Inspector Joan Coyne. Mr. Lew learned from Ms Coyne that Respondent was not certified as a licensed pharmacy technician. Then on the day of his telephone call in mid-August 2003 with Inspector Coyne, Mr. Lew instructed Respondent to leave the Costco Pharmacy premises. (Later that month, a store manager terminated Respondent’s employment with Costco.)

6. During his tenure as pharmacist-in-charge at the pharmacy within the Costco Warehouse store in Foster City, Mr. Lew was never provided by Respondent with a copy of the Board’s Decision for Mr. Lew to read.

7. At the hearing of this matter Mr. Lew authenticated Costco personnel records that pertained to Respondent.

Respondent signed Costco's "New Hire Entry" form, on April 10, 2000, which was about three weeks after Respondent's meeting with the Board's personnel regarding his obligations and duties as a licensee probationer.

Costco store has maintained wage records for Respondent for the three-year period of August 13, 2000, to August 17, 2003. The records showed Respondent worked for 81 separate pay periods for the three-year term, and he earned total gross earnings of more than \$101,000 over that period of time.

Costco store has a record that shows Respondent's termination of employment effective on August 28, 2003. The basis for Respondent's termination or resignation was due to his "failure to produce and or maintain required license."

8. Between March 2000 and September 2003, Respondent neither procured a certification from the Pharmacy Technician Certification Board nor did he provide the Board with proof of certification as a pharmacy technician.

9. Between August 13, 2000 (which was five months after his probation commenced), and August 17, 2003, Respondent unlawfully worked at Costco's Pharmacy Services Department as a pharmacy technician when the license issued to him was suspended.

10. Between August 2000 and August 2003, when he worked in violation of the terms and conditions of probation, Respondent failed to inform his employers, or supervisors, of the disciplinary action against his license. Accordingly, Respondent failed to prompt his employers or supervisors to read the Board's Decision and Order, which became effective on March 16, 2000, and he failed to cause his employers or supervisors to notify the Board that such employers or supervisors had knowledge of the Board's Decision and Order that disciplined Respondent's license.

Matters in Mitigation

11. In February 2004, Respondent completed the Pharmacy Technician Certification Board's written examination so that that board could issue him the licensure certification, which he received later in the year 2004.

12. After Respondent received the certification following the date he passed the requisite licensure examination, Respondent secured employment as a pharmacy technician.

13. After the effective date of the Board's March 2000 Decision and Order, Respondent paid the full amount of the costs of investigation and prosecution in an amount of \$1,775.

14. Respondent is married. He and his wife, who is unemployed, live with Respondent's parents in San Francisco. Respondent compellingly represented that his earnings as a pharmacy technician provide the primary source of revenue to a household that consists of four people. Respondent asserted that he is responsible to pay the entire rent of \$1,800 per month on the family's residence in San Francisco.

Matters in Aggravation

15. At the hearing of this matter, Respondent offered false and deceptive testimony under oath.

a. Respondent was not credible when he asserted at the hearing of this matter that he had not fully understood the terms and conditions of probation when he took a job at Costco in the summer of 2000 and worked until August 2003. Respondent was not truthful when he asserted he did not appreciate that his license was suspended until he fulfilled specific requirements as prescribed by the Board's Decision and Order. And Respondent was not believable at the hearing of this matter when he claimed that he did not realize that valid licensure for him to work as a pharmacy technician required the Pharmacy Technician Certification Board issue him certification of passing a written examination.

b. Respondent was not truthful at the hearing of this matter when he asserted that he assumed he could work in the period of late 2000 until August 2003, despite not having received a certification from the Pharmacy Technician Certification Board, because after he had paid license renewal application fees and the Board's personnel sent him each year a renewal certificate document. Respondent unpersuasively stated that when he received the renewal documents, he believed he had legitimate license status for each two-year term before the expressed expiration dates. (He offered two Renewal Certificates, issued after the date of the Board's Decision and Order, which indicated Respondent as being a registered Pharmacy Technician. Those documents indicated expiration dates for periods ending June 30, 2003, and June 30, 2007.) But Respondent was disingenuous when he asserted that while the license was in a suspended status he did not appreciate that he would be required to pay fees to renewed the license so as to keep his licensure current with the Board.

16. At the hearing of this matter, Respondent unconvincingly proclaimed that his youth and inexperience in adult affairs were factors in his failure to comply with the Board's Decision and Order that he received in February 2000. But Respondent is now 29 years old. And when his license was placed on probation, he was 24 years old. In 1995, Respondent studied at Northwest College in Los Angeles before becoming a pharmacy technician and he left Woodrow Wilson High School in 1992. Respondent had a sufficient education background and he had attained an age where he understood, or should have understood, the nature and seriousness of the Board's disciplinary action in 1999 and 2000.

17. Even though Respondent's history of criminal convictions was due to his abuse of alcoholic beverages, Respondent provided no evidence that since March 2000 he has successfully completed a voluntary program regarding the pathology of alcohol abuse. But at the hearing of this matter, Respondent averred that over a period spanning about ten years he has not abused alcoholic beverages.

18. Respondent produced no witness at the hearing of this matter to provide evidence regarding his current reputation in the community for integrity and honesty.

19. Respondent presented no competent evidence that since the Board's Decision, which became effective on March 16, 2000, he has been involved or participated in significant or conscientious community, church or privately-sponsored programs designed for social benefit or to ameliorate social problems.

20. Respondent provided no competent evidence that since his convictions, he had enrolled in a course of higher learning. At the hearing in October 1999, he asserted that in January 2000 he would enroll at San Francisco State University. But, at the hearing of this matter Respondent provided no record from that university to demonstrate that he had been accepted to study computer science or any other discipline.

21. Since 2002, Respondent has had an employment relationship with a temporary-employee-placement business called Pinnacle Medical Consultants, which is located in San Francisco. In 2002, when his license was suspended, Respondent worked as a "temporary" pharmacy technician at Kaiser in South San Francisco. He held that job at Kaiser at about the same time he worked for Costco.

Ultimate Findings

22. Respondent's acts and omissions when he procured and maintained employment, at a time when his license was suspended and when he failed to prompt employers to read the Board's 2000 Decision, which suspended his license, reflects unprofessional conduct. Respondent's unprofessional conduct involved dishonesty, fraud, deceit and corruption.

23. The weight of the evidence establishes that Respondent is not fully rehabilitated from his past conduct for violating the law. Respondent's deliberate disregard of terms and conditions of probation show that he is not fit to be a licensee of the Board.

Other Matters

24. In 2004, after he procured a valid certificate from the Pharmacy Technician Certification Board, Respondent secured temporary employment as a pharmacy technician through a health-care-worker-placement company called Pinnacle Medical Consultants (Pinnacle) of San Francisco. But Respondent has not given Pinnacle a copy of the Board's

Other Matters

24. In 2004, after he procured a valid certificate from the Pharmacy Technician Certification Board, Respondent secured temporary employment as a pharmacy technician through a health-care-worker-placement company called Pinnacle Medical Consultants (Pinnacle) of San Francisco. But Respondent has not given Pinnacle a copy of the Board's Decision and Order. However, he stated, under oath, that he informed Pinnacle that his license had been put on probation.

Pinnacle has sent Respondent to work as a "temp" pharmacy technician to at least three different operators of pharmacy operations. Through his employee status with Pinnacle, Respondent currently earns about \$22 per hour as a temporary pharmacy technician.

Respondent has worked extensively for pharmacies of the Safeway grocery store corporation, through which he had assignments "all over the Bay Area." He may have worked as a pharmacy technician at more than ten distinct stores of Safeway stores.

And over a period of about four months before the hearing, through his association with Pinnacle, Respondent has worked as a "temp" pharmacy technician for the West Oakland Health Center Pharmacy at 700 Adeline Street in Oakland.

Respondent has not delivered a copy of the Board's Decision and Order to any management personnel at either Safeway stores or West Oakland Health Center Pharmacy.

Cost Recovery

25. Complainant incurred costs of investigation and prosecution of the accusation against respondent as follows:

Costs Incurred Through the Filing of the Accusation

A.	Board Inspector's Costs	
	12 hours at \$65 per hour	\$780.00
B.	Legal Analyst's Costs	
	0.5 hours at \$53 per hour	\$26.50
C.	Attorney General's Costs	
	By Deputy Attorney General	
	Regarding Investigation and Prosecution	
	0.75 hours at \$112 per hour	\$84.00

D.	Attorney General's Costs By Deputy Attorney General Regarding Investigation and Prosecution 9.25 hours at \$132 per hour	\$1,221.00
	Subtotal	\$2,111.50

After the Filing of the Accusation But Before Commencement of the Hearing

A.	Board Inspector's Costs 0.25 hours at \$65 per hour	\$16.25
B.	Legal Analyst's Costs 7 hours at \$91 per hour	\$637.00
C.	Attorney General's Costs By Deputy Attorney General Regarding Investigation and Prosecution 4.5 hours at \$132 per hour	\$594.00
D.	Attorney General's Costs By Deputy Attorney General Regarding Investigation and Prosecution 12.5 hours at \$139 per hour	\$1,737.50
	Subtotal	\$2,984.75
	TOTAL COSTS INCURRED:	\$5,096.25

Respondent made no compelling and sustainable objection that Complainant's certification of costs is unreasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301, subdivision (f), provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct that 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."

Cause exists to sustain the Petition to Revoke Probation, pursuant to Business and Professions Code section 4301, subdivision (f), by reason of the matter set forth in Factual Findings 5 through 10, and 15, 22, 23 and 24.

2. Respondent's behavior and attitude towards the Board's Decision and Order manifest as deliberate and conscious disregard of the lawful authority of an agency of California state government. Moreover, his set of excuses and false assertions show him to be lacking in honesty and candor.

Respondent's attitude toward the Board is especially troublesome when he proclaimed that he did not understand the nature of the discipline that issued in 2000 against his license and that "it is the State Board's responsibility to inform people correctly regarding cases" of discipline. At the hearing in October 1999, a lawyer represented Respondent and it can be inferred that some form of communication regarding the consequences of the Board's administrative action was transmitted by the lawyer to Respondent after their receipt of the Board's decision. Moreover, the Board sent Respondent a certified letter, dated February 15, 2000, along with the Board's Decision. The letter had two "bullet points," which had the first bullet clearly stating: "you are suspended from the practice of pharmacy..." That letter's penultimate paragraph informed him that he would be scheduled to appear in Sacramento to meet with a Board representative and that the meeting's purpose would be "to explain to you the terms and conditions of your probation and your responsibilities as a probationer." That letter further warned Respondent of the consequence of his failure to comply with any of the terms and conditions of the stay of revocation. Then on March 20, 2000, Respondent traveled to Sacramento to meet with the Board's supervision inspector who lectured Respondent on the meaning of the Board's disciplinary action, and she procured Respondent's signature on a Declaration that he "thoroughly" understood the terms and conditions of the disciplinary action. Respondent's possession of license renewal forms does not indicate that he had fulfilled the Board's Decision and Order, which included an order that the Pharmacy Technician Certification Board issue a certification to Respondent after her passed an examination. When Respondent asserted that he probably "got the letter [dated February 15, 2000] but he [did] not remember reading it," Respondent showed that he was unfit to act as a licensee. At the hearing of this matter, Respondent was either totally dishonest, or he has a lack of practical knowledge, average intelligence and common sense that his continued work as a pharmacy technician may pose a grave hazard to the health and safety of the public. Respondent's truthfulness disintegrated on cross-examination during which he recanted his blame for the Board's personnel's instructions to him and changed his defense to being too young at the age of 24 year to understand the Board's Decision and Order. Respondent must show greater maturity and a more serious view of the Board's lawful exercise of authority over license holders before he can be deemed fit to possess licensed status as a pharmacy technician.

3. Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

Measured against the concrete presentation by Complainant, Respondent offered meager evidence in his defense. Respondent's professed matters in mitigation, including his familial obligations, are insubstantial when compared to the Board's burden in prosecuting

this matter and safeguarding the public from unprofessional licensees. Due to Respondent's clandestine and unlawful practice as a pharmacy technician, Complainant was compelled to thoroughly investigate Respondent's activities and to instruct its legal counsel to prepare a comprehensive prosecution of the disciplinary action. Respondent offered no competent evidence that warrants reduction of the costs incurred by Complainant.

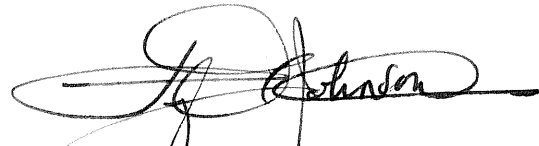
The costs of investigation and prosecution as set forth in Factual Finding 25, which amount to \$5,096.25, are reasonable. And Respondent is obligated to pay the full amount of the costs to the Board.

ORDER

1. Pharmacy Technician license number TCH 17546 issued to Respondent Robert Chou is revoked.

2. Within thirty (30) days of the effective date of the Decision, Respondent Robert Chou shall pay \$5,096.25 to the Board of Pharmacy, Department of Consumer Affairs, as its costs of investigation and prosecution in this matter. In the alternative, Respondent may enter into an installment payment plan acceptable to the Board whereby he shall pay the full amount of the costs over a period of time. But Respondent will not be eligible for re-licensure until the debt owed to the Board is paid in full.

DATED: August 17, 2005



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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

In the Matter of the Accusation Against:

ROBERT CHOU
1642 Yosemite Avenue
San Francisco, CA 94124

Pharmacy Technician License No. 17546

Respondent.

Case No. 2738

OAH No. N2005040042

DECISION

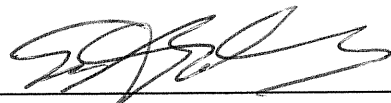
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This decision shall become effective on October 19, 2005.

It is so ORDERED on September 19, 2005.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY W. GOLDENBERG
Board President

1 BILL LOCKYER, Attorney General
of the State of California
2 LISA S. WIGGINS, State Bar No. 168399
Deputy Attorney General
3 California Department of Justice
455 Golden Gate Avenue, Suite 11000
4 San Francisco, CA 94102-7004
Telephone: (415) 703-5652
5 Facsimile: (415) 703-5480

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF PHARMACY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2738.

12 **ROBERT CHOU**
1642 Yosemite Ave.
13 San Francisco, California 94124

A C C U S A T I O N

14 Pharmacy Technician License No. 17546

15 Respondent.

16
17 Complainant alleges:

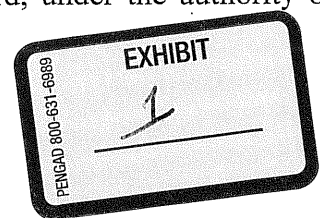
18 **PARTIES**

19 1. Patricia F. Harris ("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 or about October 30, 1995, the Board of Pharmacy issued Pharmacy
23 Technician License Number 17546 to Robert Chou ("Respondent"). The Pharmacy Technician
24 License was in full force and effect at all times relevant to the charges brought herein and will expire
25 on June 30, 2005, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Board, under the authority of the
28 following laws.



1 a. On or about February 15, 2000, the Board issued an Decision that became
2 effective on March 16, 2000. ("Decision") A true and correct copy of the Decision is attached
3 hereto as **Exhibit A**. The Decision, which was based on a disciplinary action, ordered Respondent
4 to do the following, among other things:

5 **(1) Respondent was to provide the Board with proof of certification**
6 **by the Pharmacy Technician Certification Board.** "Respondent shall be suspended from working
7 as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board and
8 provides satisfactory proof of certification to the Board." [Decision, p. 8., §1, ¶ 1.]

9 **(2) During suspension Respondent was not to enter any pharmacy**
10 **and could not perform duties of a pharmacy technician.** "During suspension, respondent shall
11 not enter any pharmacy area or any portion of the licensed premises of a wholesaler, medical device
12 retailer, food-animal drug retailer or any other distributor of drugs that is licensed by the Board, or
13 any manufacturer, or where dangerous drugs, controlled substances or legend drugs are maintained."
14 [Decision, p. 8., § 1, ¶ 2.] "During suspension, respondent shall not enter any pharmacy area nor
15 perform any of the duties of a pharmacy technician as provided by Business and Professions Code
16 section 4115." [Decision, p. 8., § 1, ¶ 3.]

17 **(3) Respondent was to notify all his employers of the Decision and its**
18 **terms and conditions.** "Respondent shall notify all present and prospective employers of the
19 decision in case number 2144 and the terms, conditions and restrictions imposed on respondent by
20 this decision." [Decision, p. 9., § 7, ¶ 1.]

21 **(4) Respondent was to have his employer report to the Board**
22 **acknowledging having read the Decision.** "Within thirty (30) days of the effective date of this
23 decision, and within fifteen days of respondent undertaking new employment, respondent shall cause
24 his employer to report to the Board in writing acknowledging the employer has read the decision in
25 case number 2144." [Decision, p. 9., § 7, ¶ 2.]

26 b. Between August 13, 2000 and August 17, 2003, Respondent worked at Costco
27 Pharmacy as a pharmacy technician.

28 c. Between March 2000 and September 2003, Respondent had not received

1 certification by the Pharmacy Technician Certification Board or provided the Board with satisfactory
2 proof of certification by the Pharmacy Technician Certification Board.

3 d. Between August 2000 and August 2003, Respondent had entered a pharmacy
4 and worked as a pharmacy technician while under suspension, in violation of the terms, conditions,
5 and restrictions of the Decision.

6 e. Between August 2000 and August 2003, Respondent had failed to inform his
7 employers at Costco Pharmacy of the Decision and its terms, conditions, and restrictions, in violation
8 of the terms, conditions, and restrictions of the Decision.

9 f. Between August 2000 and August 2003, Respondent had failed to have his
10 employers at Costco Pharmacy write the Board within 15 days of his employment at Costco
11 Pharmacy acknowledging having read the Decision, in violation of the terms, conditions, and
12 restrictions of the Decision.

13 **PRAYER**

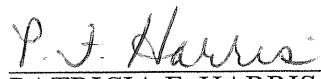
14 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein
15 alleged, and that following the hearing, the Board of Pharmacy issue a decision:

16 1. Revoking or suspending Pharmacy Technician License Number 17546, issued
17 to Robert Chou;

18 2. Ordering Robert Chou to pay the Board of Pharmacy the reasonable costs of
19 the investigation and enforcement of this case, pursuant to Business and Professions Code section
20 125.3;

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

22 DATED: 5/8/04

23 
24 PATRICIA F. HARRIS
25 Executive Officer
26 Board of Pharmacy
27 Department of Consumer Affairs
28 State of California
Complainant

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EXHIBIT A
March 16, 2000 Decision

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

In the Matter of the Accusation Against:

ROBERT CHOU
1642 Yosemite Avenue
San Francisco, CA 94124

Pharmacy Technician Registration
No. TCH17546

Applicant/Respondent

Case No. 2144

OAH No. N1999070550

DECISION

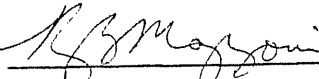
The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted as the Decision of the Director of the Department of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on March 16, 2000.

IT IS SO ORDERED February 15, 2000.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

OAH 15 (Rev. 6/84)

By 
RICHARD B. MAZZONI
Board President

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

In the Matter of the Accusation Against:

ROBERT CHOU
1642 Yosemite Avenue
San Francisco, CA 94124

Pharmacy Technician Registration
No. TCH17546

Respondent.

Case No. 2144

OAH No. N 1999070550

PROPOSED DECISION

On October 7, 1999, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California ("OAH"), heard this matter.

Maretta D. Ward, Deputy Attorney General, represented the complainant.

Richard A. Friedling, Attorney at Law, 353 Kearny Street, San Francisco, California 94108, represented respondent Robert Chou, who was present during the hearing.

The record remained open for the purpose of providing complainant's counsel the opportunity to file the certification of license history pertaining to respondent and to file a Certification of Costs of Investigation and Prosecution relative to this matter. OAH received on October 19, 1999, a telefacsimile copy of both the License History Certification and the Certification of Investigation and Prosecution. The License History Certification was marked as Exhibit "4a," and was received in evidence. The Certification of Costs of Investigation and Prosecution was marked as Exhibit "5a," and was received in evidence. On October 20, 1999, OAH received complainant's original License History Certification and the original Certification of Costs of Investigation and Prosecution. The original documents were marked respectively as Exhibit "4b" and "5b."

On October 20, 1999, the record was closed and the matter was deemed submitted.

FACTUAL FINDINGS

1. Complainant Patricia F. Harris, the Executive Officer of the Board of Pharmacy ("Board"), made and issued the Accusation in her official capacity.

Complainant signed the Accusation on June 1, 1999.

LICENSE INFORMATION

2. On October 30, 1995, the Board issued Pharmacy Technician License No. TCH17546 to Robert Chou ("respondent"). The registration will expire on June 30, 2001, unless renewed.

3. On March 1, 1996, in case no. NM261494A, the San Mateo County Municipal Court, San Mateo Judicial District, convicted respondent, on a plea of nolo contendere, of the misdemeanor of driving while under the influence of alcohol (Vehicle Code section 23152, subd. (b)).

4. As a consequence of his conviction in March 1, 1996, a judge of the San Mateo County Municipal Court sentenced respondent to seven (7) days in county jail, which called for respondent to surrender to the jail on April 14, 1996. The court also ordered respondent to pay a fine of \$1,131. However, the court granted a stay of the fine payment so that respondent could pay the fine on or before March 3, 1997. The court also directed respondent to pay \$110 to the state restitution fund. Additionally, the court ordered respondent to enter and complete the First Offender program. The commencement date for enrollment in the program was specified as March 22, 1996. The court suspended respondent's driver's license for one year. The court directed that respondent abstain from consuming alcoholic beverages. The court placed respondent into court probation for a period of three (3) years.

5. Respondent violated terms of the court probation as issued by the San Mateo County Municipal Court following his conviction in March 1996.

On June 1, 1996, the court entered in its records that an "affidavit of court probation violation and motion for issuance of bench warrant filed...[Respondent] failed to complete 7 (done 1) days SWP. Probation is revoked pending a hearing." On July 2, 1996, the court held a hearing at which respondent denied allegations of having violated probation.

On July 11, 1996, respondent appeared with counsel to admit to the probation violation allegations. The court revoked probation; however, the court reinstated probation under similar terms and conditions as the original sentence. The court imposed an additional jail term of 10 days upon respondent. The court deleted respondent's enrollment in the First Offender program.

The court commanded that respondent enroll and complete the Multiple Offender Program.

The court's record makes reference to a companion case identified as case number NM266144A.

6. On July 11, 1996, the San Mateo Municipal Court in Case No. NM266144 convicted respondent of violating the following three statutes: Vehicle Code section 23152, subd. (b) [Driving a motor vehicle with a blood alcohol level of 0.08 or higher], Vehicle Code section 14601.5, subd. (a) [Driving on a Suspended License] and Vehicle Code section 23165 [Driving under the Influence of Alcohol. Second Offense within Seven Years].

All offenses are misdemeanors.

7. As a consequence of respondent's July 11, 1996, conviction in case number NM266144A, the San Mateo Municipal Court placed respondent on formal probation for three years. The court imposed on respondent a court fine of \$1,401. Respondent was directed to pay court fees of \$163. Also, the court required respondent to pay a state restitution fund fine in an amount of \$110. Although the court gave respondent 45 days jail time, the court granted him 9 days credit for time served. The court directed respondent to make his first payment on the fines and fees by August 29, 1996. He was to pay the full amount of the fines and fees by September 5, 1997. Also, the court commanded respondent to enroll in the Multiple Offender program by August 30, 1999. The court suspended respondent's driver's license for 18 months. Not only did the court direct respondent to abstain from consuming alcoholic beverages, but the court also forbade respondent from entering any public place where the primary merchandise sold is intoxicating liquor.

8. On November 13, 1996, in case number NM266144A, the San Mateo Court noted that respondent failed to make monthly payments of the court imposed fine. On November 20, 1996, the court record set forth "affidavit of court probation violation filed... [Respondent] failed to complete SWP to do 36 (done 26) day...."

On December 2, 1996, respondent admitted to the allegations of probation violation.

The court continued the hearing to January 3, 1997. On that date the court noted that respondent's "probation is revoked pending a hearing."

On March 7, 1997, the court conducted a hearing. Respondent admitted to having violated the terms of probation. Probation was revoked; yet, the court reinstated a term of probation. The court extended probation until March 7, 2000.

The court sentenced respondent to 13 days in county jail. The court commanded respondent to surrender on April 19, 1997.

The court ordered respondent to enroll and to complete the Multiple Offender program.

On March 10, 1997, the court noted that respondent had made partial payment of the fines in the amount of \$129. The court record shows that as of that date a remaining balance was owed in the amount of \$1,159.

Matters in Mitigation

9. At the time of his committing the last set of crimes, respondent was 20 years old. His date of birth is June 2, 1976.

10. Respondent's last criminal act pertaining to abuse of alcohol occurred three years ago.

11. Respondent compellingly relays that when he consumed the alcoholic beverages and then operated a motor vehicle, old companions had influenced his misconduct.

12. Respondent expresses remorse for his reckless consumption of alcoholic beverage and then operating a motor vehicle while under the influence of intoxication drink.

13. No person suffered an injury due to respondent's misconduct.

14. Respondent has secured gainful employment since his criminal convictions. At the time of the hearing in this matter he held two jobs. Since March 1998, respondent has had a full time position as a pharmacy technician with the Walgreen Drug Store on Franklin Street in San Francisco. For a year and a half, he has worked 15 hours per week as a file clerk at the Mariners' Hospital in Foster City, San Mateo County.

15. Complainant offers no evidence of prior disciplinary action by the Board against respondent's license.

16. The criminal acts for which respondent was convicted in 1996 were all committed within a short period of time. The span of time when he engaged in the misconduct suggest that he was in a irresponsible phase of his life when he had not yet reached his 21st birth date.

17. Complainant offers no record of additional arrests or convictions other than the matter set forth above.

18. As part of his probation, respondent is performing community service in the County of San Mateo Sheriff's Work Program ("SWP"). Since his enrollment in the SWP, respondent has made 29 consecutive meeting dates.

19. Respondent lives with his parents and a brother at his current address. Complainant provides no evidence that respondent fails to have stability in his family and community existence.

Respondent credibly contends that he has formed new friendships with persons who do not influence him to drink alcoholic beverages.

Matters in Aggravation

20. Respondent provides no evidence that he has successfully completed a voluntary program regarding the pathology of alcohol abuse. Moreover, he presents no evidence he has recognition that he needs substance abuse rehabilitation treatment.

21. Respondent produces no witness to corroborate his account of having been influenced by older men to engage in drinking alcohol beverages and then driving an automobile.

22. Respondent continues to associate with the older men who were the individuals who purportedly first influenced his abuse of alcohol that led to his criminal convictions.

23. Respondent presents no competent evidence that he has been involved or participated in significant or conscientious community, church or privately-sponsored programs designed for social benefit or to ameliorate social problems.

24. Respondent provides no competent evidence that since his convictions, he had enrolled in a course of higher learning. He does contend that in January 2000 he will enroll at San Francisco State University; yet, he provides no record from the college to demonstrate that he had been accepted by the university to study computer science.

25. Respondent provides no competent evidence that he has fully paid all fines and fees imposed as a result of his criminal convictions. He claims that he has paid all such fines.

26. Respondent remains on probation from his last criminal conviction. The term of probation will not end until March 7, 2000. Moreover, respondent admits that he has not completed the San Mateo County Sheriff's Work Program., which is a part of his conviction punishment. He only began the Sheriff's Work Program in June 1999.

27. Even though the terms of his criminal conviction sentencing require that he abstain from drinking alcoholic beverages, respondent admits that he has attended birthday parties where he has consumed alcoholic drinks.

Ultimate Finding

28. The weight of the evidence establishes that although he has made some progress since his last conviction, respondent is not fully rehabilitated from his 1996 criminal convictions for misconduct associated with the abuse of the drug known as alcoholic beverage.

Cost Recovery

29. Complainant incurred costs of investigation and prosecution of the accusation against respondent as follows:

A.	Attorney General Costs		
	By Deputy Attorney General		
	Regarding Investigation and Prosecution		
	Prior to filing the Accusation		
	9.5 hours at \$100 per hour		\$950
B.	Attorney General Costs		
	By Deputy Attorney General		
	Regarding Investigation and Prosecution		
	After the Filing of the Accusation and Before		
	Commencement of the Hearing		
	8.25 hours at \$100 per hour		\$825
	TOTAL COSTS INCURRED:		\$1,775

Respondent makes no compelling and sustainable objection that Complainant's certification of costs is unreasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4301 provides that the Board shall take disciplinary action against any licensee who is guilty of unprofessional conduct. Unprofessional conduct under Code section 4301, subdivision (l) includes "the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee...."

Title 16, California Code of Regulations section 1770 specifies that "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...to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare." [Italics added.] Respondent's commission of a series of criminal acts involving alcohol abuse indicates a clear danger of respondent's potential unfitness to perform as a pharmacy technician. There is sufficient

evidence to determine that respondent's convictions of alcohol abuse evidences his potential unfitness to perform as a pharmacy technician.

Cause exists for discipline against respondent's license under Business and Professions Code section 4301, subd. (l), by reason of the matters set forth in Factual Findings 3 and 6.

2. Unprofessional conduct under Code section 4301, subdivision (k) is "the conviction of more than one misdemeanor ... involving the use, consumption, or self-administration of ... alcoholic beverage...."

Within a span of five months, respondent was convicted of driving under the influence of alcohol on two occasions. At the time of the second incident that led to a conviction respondent was operating a motor vehicle with a suspended driver's license. Also, after the second conviction, respondent continued to violate the terms of probation so that he suffered the imposition of additional jail confinement and his term of criminal probation was extended until March 2000.

Cause exists for discipline against respondent's license under Business and Professions Code section 4301, subd. (k), by reason of the matters set forth in Findings 3, 6 and 8.

3. Respondent is now 23 years of age. He compellingly contends that he has changed his attitude and his pattern of behavior. Although he is not fully rehabilitated, respondent's youth coupled with the fact that no one suffered injury due to his misuse of alcohol militate against imposition of the most strenuous discipline against his license.

4. Code section 125.3 prescribes that a "licentiate found to have committed a violation or violations of the licensing act" may be directed "to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

The reasonable costs of investigation and prosecution as set forth in Factual Finding 29 amount to \$1,775.

The total costs are not unreasonable, especially because the value of the time of the deputy attorney general who attended to the hearing and her time as expended in awaiting¹ respondent's appearance for the hearing is not included in the certificate of costs for the necessary prosecution of this matter.

¹ Due to respondent's tardiness, the hearing originally set for 9 o'clock in the morning did not begin until 3 o'clock in the afternoon. The deputy attorney general and OAH lost valuable temporal resources by reason of respondent's irresponsibility in attending to the defense of his interest at the hearing of this matter.

ORDER

Pharmacy Technician registration number TCH 17546 issued to respondent Robert Chou is revoked. However, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

Certification Prior to Resuming Work

1. Respondent shall be suspended from working as a pharmacy technician until he is certified by the pharmacy technician certification board and provides satisfactory proof of certification to the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, medical device retailer, food-animal drug retailer or any other distributor of drugs that is licensed by the Board, or any manufacturer, or where dangerous drugs, controlled substances or legend drugs are maintained.

During suspension, respondent shall not enter any pharmacy area nor perform any of the duties of a pharmacy technician as provided by Business and Professions Code section 4115.

Obey All Laws

2. Respondent shall obey all federal and state laws and regulations substantially related or governing the practice of pharmacy.

Abstain from Alcohol Use

3. Respondent shall abstain completely from the use of alcoholic beverages.

Reporting to the Board

4. Respondent shall report to the Board or its designee quarterly. The report shall be made either in person or in writing, as directed. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made.

Interview with the Board

5. Upon receipt of reasonable notice, respondent shall appear in person for interviews with the Board or its designee upon request at various intervals at a location to be determined by the Board or its designee. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

Cooperation with Board Staff

6. Respondent shall cooperate with the Board's inspection program and in 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.

Notice to Employers

7. Respondent shall notify all present and prospective employers of the decision in case number 2144 and the terms, conditions and restrictions imposed on respondent by this decision.

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking new employment, respondent shall cause his employer to report to the Board in writing acknowledging the employer has read the decision in case number 2144.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify the pharmacist-in-charge and/or owner at every pharmacy at which he is employed or used of the fact and terms of the decision in case number 2144 in advance of respondent commencing work at the pharmacy.

"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, whether the respondent is considered an employee or independent contractor.

Reimbursement of Board Costs

8. Within sixty (60) days of the effective date of this decision, or under installment terms acceptable to the Board, respondent shall pay \$1,775 to the Board of Pharmacy, Department of Consumer Affairs, as its costs of investigation and prosecution in this matter.

Tolling of Probation

9. If respondent leaves California to reside or practice outside this state, respondent must notify the Board in writing of the dates of departure and return within ten (10) days of departure or return. Periods of residency, except such periods where the respondent is actively practicing as a pharmacy technician within California, or practice outside California shall not apply to reduction of the probationary period.

Should respondent, regardless of residency, for any reason cease practicing as a pharmacy technician in California, respondent must notify the Board in

writing within ten (10) days of cessation of practice or resuming practice. "Cessation of practice" means any period of time exceeding thirty (30) days in which respondent is not engaged in the practice of a pharmacy technician as defined in section 4115 of the Business and Professions Code.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding a consecutive period of [three] years.

Tolling of Suspension

10. If respondent leaves the State of California to reside or to practice outside this state, or for any period exceeding ten (10) days (including vacation), respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the state or any absence exceeding a period of ten (10) days shall not apply to the reduction of the suspension period.

Respondent shall not act as a pharmacy technician upon returning to this state until notification by the Board the period of suspension has been completed.

Violation of Probation

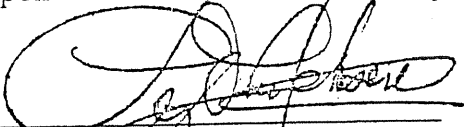
11. If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended, until the petition to revoke probation is heard and decided.

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 met 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 which was stayed.

Completion of Probation

12. Upon successful completion of probation, respondent's certificate will be fully restored.

DATED: November 8, 1999


PERRY O. JOHNSON
Administrative Law Judge

1 BILL LOCKYER, Attorney General
of the State of California
2 MARETTA DENISE WARD,
Deputy Attorney General, State Bar No. 176470
3 Department of Justice
50 Fremont Street, Suite 300
4 San Francisco, California 94105-2239
Telephone: (415) 356-6698

5 Attorneys for Complainant

6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9 In the Matter of the Accusation) NO. 2 1 4 4
Against:)
10)
11 ROBERT CHOU) A C C U S A T I O N
1642 Yosemite Ave.)
San Francisco, CA 94124)
12)
Pharmacy Technician)
13 Registration No. TCH17546)
14 Respondent.)

15
16 Complainant Patricia Harris, as cause for disciplinary
17 action, alleges:

18 1. Complainant is the Executive Officer of the
19 California Board of Pharmacy ("Board") and makes and files this
20 accusation solely in her official capacity.

21 LICENSE INFORMATION

22 2. On or about October 30, 1995, Pharmacy Technician
23 Registration No. TCH17546 was issued by the Board to Robert Chou
24 ("respondent"). The license was and currently is in full force
25 in effect until June 30, 1999.

26 STATUTES AND REGULATIONS

27 3. California Business and Professions Code

1 (hereinafter referred as the Code) section 4300 ^{1/2}, former
2 section 4350, provides that every license issued by the Board may
3 be disciplined.

4 4. Code section 4301, former section 4350.5, provides
5 that the Board shall take action against any holder of a license
6 who is guilty of unprofessional conduct. Unprofessional conduct
7 includes but is not limited to:

8 (k) The conviction of more than one misdemeanor or any
9 felony involving the use, consumption, or self-administration of
10 any dangerous drug or alcohol beverage, or any combination of the
11 substances.

12 (l) The conviction of a crime substantially related to the
13 qualifications, functions, and duties of the licensee under the
14 chapter ...

15 5. Under Business and Professions Code section 490, the
16 Board may suspend or revoke a pharmacy technician license when it
17 finds that the licensee has been convicted of a crime
18 substantially related to the qualifications, functions, or duties
19 of a pharmacy technician.

20 6. Business and Professions Code section 125.3 provides,
21 in part, that the Board may request the Administrative Law Judge
22 to direct any licentiate found to have committed a violation or
23 violations of a licensing act, to pay the Board a sum not to
24 exceed the reasonable cost of the investigation and
25 enforcement of the case.

26
27 1. The Pharmacy law has been recodified as of January 1,
1997. Reference will be made to the new code sections.

1 FIRST CAUSE FOR DISCIPLINE

2 7. Respondent Robert Chou is subject to disciplinary
3 action pursuant to Business and Professions Code section 4301(1)
4 in that he has been convicted of crimes substantially related to
5 the qualifications, functions, and duties of a pharmacy
6 technician. The circumstances surrounding the convictions are as
7 follows:

8 A. On or about March 1, 1996, respondent entered a plea of
9 nolo contendere to a violation of California Vehicle Code section
10 23152(b) in the case entitled People of the State of California
11 v. Robert Chou, San Mateo County Municipal Court, County of San
12 Mateo, case number 261494. Respondent had a blood alcohol level
13 of 0.08 % or more while driving his vehicle, a misdemeanor. The
14 conditions of respondent's sentence are as follows:

- 15 a. Three years probation
16 b. Seven days in jail
17 c. A fine of \$1,241.
18 d. Participation in the first offenders program
19 e. Abstaining from use of alcohol
20 f. One-year suspension of driver's license.

21 B. On or about July 11, 1996, respondent pled nolo
22 contendere to violating California Vehicle Code sections
23 14601.5(a) (driving on suspended license), 23165 (driving under
24 the influence; second offense within seven years), and 23152(b)
25 (driving with a blood alcohol level of 0.08 or higher), a
26 misdemeanor, in the case entitled People of the State of
27 California v. Robert Chou, San Mateo County Municipal Court,

1 County of San Mateo, Case No. 266144. The conditions of
2 respondent's sentence are as follows:

- 3 a. Three years probation
- 4 b. 45 days in jail
- 5 c. A fine of \$1,675.
- 6 d. Eighteen months suspension of driver's license.
- 7 e. Abstaining from use of alcohol
- 8 f. Completion of a multiple offenders program.

9 SECOND CAUSE FOR DISCIPLINE

10 8. Paragraph 7 is herein incorporated by reference as
11 though fully set forth.

12 9. The conduct of respondent as alleged in paragraph 7
13 above, constitutes grounds for disciplinary action pursuant to
14 Business and Professions Code section 4301(k) in that respondent
15 has been convicted of more than one misdemeanor involving the
16 consumption of alcoholic beverages.

17 PRAYER

18 WHEREFORE, complainant prays that a hearing be held and that
19 an order be made:

- 20 1. Revoking or suspending license number TCH17546 issued
21 to respondent Robert Chou;
 - 22 2. Awarding costs in favor of the Board as provided by
23 statute; and
 - 24 3. Granting such further relief as the Court deems
25 appropriate.
- 26
27

1 DATE: 6/1/99

P. J. Harris
Patricia Harris
Executive Enforcement
Board of Pharmacy
State of California

5 Complainant

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