

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

In the Matter of:

KEITH RAYMOND BARKER  
1216 Mary Arthur Court  
Chico, California 95926

Pharmacy Technician Registration  
No. TCH 54053,

Respondent.

Case No. 2862

OAH No. N2005120765

**PROPOSED DECISION**

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings in Sacramento, California, on February 6, 2006.

Lorrie M. Yost, Deputy Attorney General, State of California, represented complainant Patricia F. Harris, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California.

Keith Raymond Barker (respondent) appeared and represented himself.

Evidence was received and the matter submitted on February 6, 2006.

**FACTUAL FINDINGS**

1. Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California, brought the accusation in her official capacity against respondent.

2. On January 20, 2004, the Board issued Pharmacy Technician Registration Number TCH 54053 to respondent. The registration is in full force and effect.

3. On October 24, 2004, Chico Police Officer Melody Davidson responded, with another officer, to a call of a man under the influence of a controlled substance at a certain location. Respondent's girlfriend met the officers and related that he had been house-sitting and for the past several days he had been exhibiting increasing symptoms of substance abuse. Carefully, out of concern for their safety, the officers entered the residence. Respondent was found in a corner of the kitchen sitting alone on a chair. Officer Davidson, possessing broad experience in drug abuse detection, approached respondent. Respondent exhibited various symptoms of controlled substance abuse, including hallucination, incoherence, and an inability to concentrate. Officer Davidson arrested respondent.

4. On December 10, 2004, in the Superior Court of California, County of Butte, in a matter entitled *People v. Keith Raymond Barker*, Case Number SCR47268, respondent, then age 28, pled guilty to violating Health and Safety Code section 11550, subdivision (a) (Under the Influence of a Controlled Substance), a misdemeanor and crime substantially related to the qualifications, functions or duties of a pharmacy technician. The Court deferred entry of judgment and ordered respondent to complete an 18-month diversion program.

#### *Circumstances in Mitigation*

5. Respondent, 29 years old, acknowledges his errant conduct on October 24, 2004. Currently unemployed, he has recently enrolled in a residential substance abuse treatment program. He acknowledges past abuse of controlled substances. He cites January 2, 2006, as a date of complete sobriety from any illicit substance ingestion, including alcohol.

6. Respondent, proud of his 4.0 grade point average in pharmacy technician school, seeks to retain his registration as an affirmation of his academic commitment, professional interest, and to maintain employment opportunities.

#### *Circumstances in Aggravation*

7. Within months of the issuance of his pharmacy technician registration, respondent was arrested for a violation of law involving illicit substance abuse.

8. Respondent has not yet completed the diversion program ordered by the Superior Court.

9. Respondent acknowledges the continuing abuse of illicit substances even after his arrest by Officer Davidson.

10. Respondent's errant conduct occurred less than two years ago.

#### *Costs Findings*

11. The Board incurred costs in the investigation, prosecution and enforcement of this matter in the sum of \$2,750.50

1. Cause exists to revoke or suspend the license of respondent as a registered pharmacy technician for unprofessional conduct arising from self-administration of controlled substances pursuant to Business and Professions Code section 4301, subdivision (h) as set forth in Findings 2 through 4.

2. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth factors to be considered in determining the reasonableness of costs incurred by the Board. Those factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In the instant matter, respondent did not deny his culpability. But to clearly establish his unprofessional conduct, complainant was compelled to present the live testimony of the arresting police officer to both demonstrate respondent's underlying guilt to the charge for which Officer Davidson arrested respondent and to also show the nature, scope and extent of his errant conduct. Respondent, presently unemployed, presented no evidence directly challenging the Board's incurred costs or his own ability to reimburse the Board.

Cause accordingly exists to order respondent to pay the sum of \$2,750.50 and for reasonable costs incurred in the investigation, enforcement and prosecution of this matter pursuant to the provisions of Business and Professions Code section 125.3, and as set forth in Legal Conclusion 1, and Finding 11.

3. The objective of a disciplinary proceeding is to protect the public, the licensed profession, maintain integrity, high standards, and preserve public confidence in Board licensure.<sup>1</sup> And, having determined culpability, a key concern lies in arriving at a disciplinary recommendation that is the degree to which the public needs protection from an errant practitioner.<sup>2</sup>

Despite his interest in maintaining his registration, and his recent participation in a rehabilitation program; it cannot be readily ignored that within months of his registration, respondent was arrested for abusing illicit controlled substances. That, combined with his admitted post-arrest abuse and recent date of sobriety, and mindful that the primary focus of the Board is, as observed by the appellate court in *Fahmy v. Medical Board of California, Supra*, 38 Cal.App.4th p. 817 at p. 817, to "afford protection to the public"; and with further regard to the circumstances in mitigation (Findings 5 through 6) and aggravation (Findings 7 through 10), the public interest will be harmed at this time<sup>3</sup> by the continued issuance of a pharmacy technician registration to respondent.

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<sup>1</sup> *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 816.

<sup>2</sup> *Mepham v. State Bar* (1986) 42 Cal.3d 943, 948; see also *Fahmy v. Medical Board of California, Supra*, 38 Cal.App.4th p. 817 at p. 817.

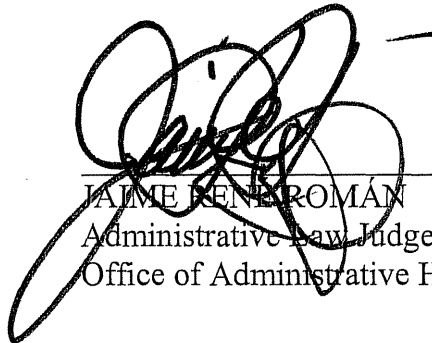
<sup>3</sup> Although this Decision and Order are adverse to respondent, he must not lose heart from the issuance of this Decision. He should continue with his rehabilitative efforts and, upon possessing sufficient evidence of rehabilitation, seek re-licensure.

ORDER

1. Pharmacy Technician Registration No. TCH 54053 issued to respondent Keith Raymond Barker is revoked pursuant to Legal Conclusions 1 and 3.

2. Respondent Keith Raymond Barker (Pharmacy Technician Registration No. TCH 54053) is ordered to reimburse the sum of \$2,750.50 to Board of Pharmacy, Department of Consumer Affairs, State of California, pursuant to Legal Conclusion 2.

Dated: February 9, 2006



JAIME RENEROMAN  
Administrative Law Judge  
Office of Administrative Hearings

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

In the Matter of:

KEITH RAYMOND BARKER  
1216 Mary Arthur Court  
Chico, CA 95926

Pharmacy Technician Registration  
No. TCH 54053

Respondent.

File No. 2862

OAH No. N2005120765

**DECISION**

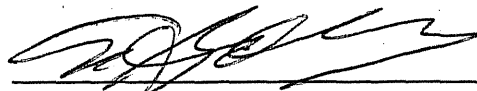
The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as its Decision in the above-entitled matter.

This Decision shall become effective on April 12, 2006.

IT IS SO ORDERED March 13, 2006.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

By

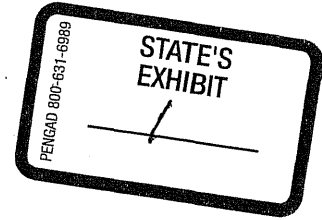


STANLEY W. GOLDENBERG  
Board President

ORIGINAL

1 BILL LOCKYER, Attorney General  
of the State of California  
2 LORRIE M. YOST, State Bar No. 119088  
Deputy Attorney General  
3 California Department of Justice  
1300 I Street, Suite 125  
4 P.O. Box 944255  
Sacramento, CA 94244-2550  
5 Telephone: (916) 445-2271  
Facsimile: (916) 327-8645

6 Attorneys for Complainant



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

12 In the Matter of the Accusation Against:

Case No. 2862

13 **KEITH RAYMOND BARKER**  
1216 Mary Arthur Court  
14 Chico, California 95926

**ACCUSATION**

15 Pharmacy Technician Registration No. TCH 54053

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Patricia F. Harris ("Complainant") brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of  
22 Consumer Affairs.

23 2. On or about January 20, 2004, the Board issued Pharmacy Technician  
24 Registration Number TCH 54053 to Keith Raymond Barker ("Respondent"). Respondent's  
25 pharmacy technician registration was in full force and effect at all times relevant to the charges  
26 brought herein and will expire on June 30, 2007, unless renewed.

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1 (b) Any device that bears the statement: "Caution: federal law restricts this  
2 device to sale by or on the order of a -----," "Rx only," or words of similar  
3 import, the blank to be filled in with the designation of the practitioner licensed to  
4 use or order use of the device.

5 (c) Any other drug or device that by federal or state law can be lawfully  
6 dispensed only on prescription or furnished pursuant to Section 4006.

7 7. Bus. & Prof. Code section 477 provides, in pertinent part, that "license"  
8 includes certificate, registration or other means to engage in a business or profession regulated by  
9 the Bus. & Prof. Code.

10 8. Health and Safety Code ("Health & Saf. Code") section 11550,  
11 subdivision (a), states:

12 No person shall use, or be under the influence of any controlled substance  
13 which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of  
14 subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or  
15 (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of  
16 Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in  
17 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified  
18 in Schedule III, IV, or V, except when administered by or under the direction of a  
19 person licensed by the state to dispense, prescribe, or administer controlled  
20 substances. It shall be the burden of the defense to show that it comes within the  
21 exception. Any person convicted of violating this subdivision is guilty of a  
22 misdemeanor and shall be sentenced to serve a term of not less than 90 days or  
23 more than one year in a county jail. The court may place a person convicted under  
24 this subdivision on probation for a period not to exceed five years and, except as  
25 provided in subdivision (c), shall in all cases in which probation is granted  
26 require, as a condition thereof, that the person be confined in a county jail for at  
27 least 90 days. Other than as provided by subdivision (c), in no event shall the  
28 court have the power to absolve a person who violates this subdivision from the  
obligation of spending at least 90 days in confinement in a county jail.

### Cost Recovery

21 9. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board  
22 may request the administrative law judge to direct a licentiate found to have committed a  
23 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
24 investigation and enforcement of the case.

### CONTROLLED SUBSTANCES AT ISSUE

26 10. "Methamphetamine" is a Schedule II controlled substance as designated by  
27 Health & Saf. Code section 11055, subdivision (d)(2), and a dangerous drug within the meaning  
28 of Bus. & Prof. Code section 4022 in that it is available by prescription only.





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

DATED: 8/31/05

P. J. Harris  
PATRICIA F. HARRIS  
Executive Officer  
Board of Pharmacy  
Department of Consumer Affairs  
State of California  
Complainant

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phd; 07/13/2005