

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

In the Matter of the Accusation Against:

CHRISTOPHER M. THOMPSON
884 Burbank Drive #7
Santa Clara, CA 95051

Case No. 3237

OAH No. 2009020142

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), second paragraph of the ORDER, appearing on page 14 of the Proposed Decision, is hereby modified for technical reasons as follows:

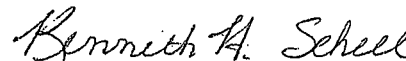
Within thirty (30) days of the effective date of the Decision, Respondent Christopher M. Thompson shall pay \$3,000 to the California State Board of Pharmacy, Department of Consumer Affairs, as its costs of investigation and prosecution in this matter. In the alternative, Respondent may enter into an 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:

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on October 14, 2009.

IT IS SO ORDERED this 14th day of September, 2009.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



KENNETH H. SCHELL
Board President

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

In the Matter of the Accusation Against:

CHRISTOPHER M. THOMPSON
Santa Clara, California

Pharmacy Technician License No. TCH 58686

Respondent.

Case No. 3237

OAH No. 2009020142

PROPOSED DECISION

On May 14, 2009, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California (OAH), heard this matter.

Justin R. Surber, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer, the Board of Pharmacy, Department of Consumer Affairs.

Respondent Christopher M. Thompson was present for the hearing, but he was not otherwise represented.

On May 14, 2009, the record was closed and the matter was deemed submitted.

FACTUAL FINDINGS

1. On January 6, 2009, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy (the Board), Department of Consumer Affairs, made and issued the Accusation against Respondent Christopher M. Thompson.

License Information

2. On October 21, 2004, the Board issued Pharmacy Technician License number TCH 58686 to Christopher M. Thompson (Respondent). The license issued to Respondent was in full force and effect at all times relevant to the matters raised in the Accusation. The license will expire on July 31, 2010, unless renewed, surrendered or revoked before that date.

Record of Criminal Convictions

a. *November 2005-Driving Under the Influence of Alcohol*

3. On November 30, 2005, in case number CC508841, the California Superior Court for the County of Santa Clara convicted Respondent, on a plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (b) (Unlawful Driving a Motor Vehicle With A Blood Alcohol Level of 0.08 Percent or More), a misdemeanor.

4. The crime of driving with a blood alcohol level of 0.08 percent or more is substantially related to the qualifications, functions, or duties of a pharmacy technician licensee.

5. The facts and circumstances that led to Respondent's conviction in November 2005 arose out of events that occurred on October 24, 2005. On that October 2005 date at about 4:30 p.m., on a clear, dry day, Respondent caused a three-vehicle collision by rear ending with his Dodge pickup truck a passenger car, which was forced into another vehicle. The collision resulted in a passenger in one of the other vehicles to sustain a back injury.

When questioned by police, Respondent acknowledged that his inattention to driving, which flowed from him reaching for a cellular phone, caused the collision. But he lied when a police officer queried him about whether he had consumed an intoxicating beverage before the mishap. Respondent first told an officer that he "was taking Librium for alcoholism," but he later made an admission that during the earlier afternoon he had consumed two 24-ounce cans of beer. Police detected an odor of alcohol on Respondent's breath and he failed aspects of the field sobriety test as administered by the police officer, who arrested Respondent for drunk driving.

6. Respondent's criminal conduct in October 2005 involved his use of alcohol to an extent that was injurious to himself or others.

7. As a consequence of the November 2005 conviction, the court suspended imposition of sentence and placed Respondent on court (informal) probation for a period of three years. The probation's terms and conditions included a 20-day jail term; a directive that Respondent pay fines and fees of about \$1,500; and an order that he complete a three-month first-offender alcohol abuse counseling program. (The court recommended that Respondent complete the jail term in the Sheriff's Weekend Work Program (WWP).) And the court suspended Respondent's driving privileges for a one-year term.

By the terms and conditions of probation, Respondent was required to obey all laws.

b. *June 2006-Driving Under the Influence of Alcohol*

8. On June 14, 2006, in Case Number CC632434, the California Superior Court for Santa Clara County, on a plea of nolo contendere, convicted Respondent of violating

Vehicle Code section 23152, subdivision (a) (Unlawful Driving a Motor Vehicle While Under the Influence of Alcoholic Beverage), a misdemeanor.

9. The crime of drunk driving is substantially related to the qualifications, functions, or duties of a pharmacy technician licensee.

10. A criminal complaint, dated June 12, 2006, sets out that Respondent's drunk driving offense occurred on June 9, 2006. The complaint further alleged that Respondent had a prior drunk driving conviction through the Santa Clara County court that occurred on October 24, 2005.

On June 9, 2006, at about 6:30 p.m., Respondent drove his Dodge pickup truck into a Popeye's restaurant in such a careless manner that the truck collided with a parked BMW sedan and knocked off the car's bumper. As a result of a police investigation, law enforcement personnel learned that when Respondent was confronted by the BMW's owner, Respondent refused to exchange driver's license and insurance information with the car's owner. He initially drove from the parking lot, but before the police arrived at the accident site, Respondent has returned to the scene of his criminal act.

When police officers questioned him, an odor of alcohol was detected to emit from Respondent. After failing a field sobriety test, Respondent made an admission that he has consumed one-half pint of Jack Daniels Whisky about one half-hour before the collision.

During the police interrogation, Respondent lied to police by representing that he had had been arrested on three earlier occasions for drunk driving. But police learned that he had a history of "six prior D.U.I. (23152(a) VC) arrests, with the most recent arrest in October of 2005." The arresting officer noted in his report that "[b]ecause of the time period between D.U.I. arrests, [Respondent] was not a candidate for felony D.U.I." prosecution as a result of the June 2006 crime.

During the investigation of Respondent's drunk driving crime, police learned that before leaving his house to drive to the fast food restaurant, Respondent had taken 25 milligrams of Librium, which was part of a regime in "trying to quit drinking."

Police arrested Respondent not only for driving under the influence of alcohol, but also for the misdemeanor offense of hit and run. But the District Attorney filed a misdemeanor complaint that only alleged Respondent's drunk driving offense.

11. Respondent's criminal conduct in June 2006 involved his use of alcohol to an extent that was injurious to himself or others.

12. As a consequence of the June 2006 conviction, the Santa Clara County Superior Court suspended imposition of sentence and placed Respondent on court probation for three years under certain terms and conditions.

The terms and conditions of probation included an order that Respondent spend 45 days in a work furlough program. (But the court granted Respondent 15 days credit towards the term of confinement so that he actually spent 24 days in the work furlough arrangement.) Also, the terms of probation required Respondent to pay fines and fees in excess of \$1,600. And the court ordered Respondent to enroll in a county approved drunk driver counseling program.

By the terms and conditions of probation, Respondent was required to obey all laws.

c. July 2008 Drunk Driving Conviction

13. On July 8, 2008, in case number CC807293, the California Superior Court for Santa Clara County convicted Respondent of violating Vehicle Code section 23152, subdivision (b) (Willfully and Unlawfully Driving a Motor Vehicle While Having a 0.08 Percent or More, By Weight, of Alcohol in His Blood), a misdemeanor.

14. The crime of driving under the influence of alcoholic beverages is substantially related to the qualifications, functions, or duties of a pharmacy technician licensee.

15. The facts and circumstances that led to Respondent's DUI conviction in July 2008 arose out of events that occurred in May 2008.

On May 30, 2008, at about 10 p.m., Respondent carelessly operated his Dodge Ram truck so as to side-swipe another vehicle.

At the scene of the collision, police detected an odor of alcohol emitting from Respondent's breath. After he failed the field sobriety test, Respondent informed the arresting police officer that he had consumed "two shots of whiskey and two beers before he left home." Breath samples showed Respondent blood alcohol level to be 0.13 percent and 0.12 percent.

16. Respondent's criminal conduct in May 2008 involved his use of alcohol to an extent that was injurious to himself or others.

17. The July 2008 conviction resulted in the superior court suspending imposition of sentence and placing Respondent on court probation for a term of three years.

Under the terms and conditions of probation, the court ordered Respondent to spend 10 months in county jail; however, the court granted Respondent credit for 40 days of time served. And the court required Respondent to pay fines and fees of about \$2,300. Furthermore, the court directed Respondent to enroll in the Multiple Offender Program, and the court ordered a three-year revocation of Respondent's driver's license.

Multiple Drunk Driving Convictions

18. When Respondent committed the October 2005 drunk driving crime that led to the November 2005 conviction, he had a record of about five DUI arrests. Accordingly, the drunk driving offenses committed by Respondent in October 2005, June 2006, and May 2008, are all crimes involving moral turpitude.

Matters in Mitigation and Respondent's Background

19. Respondent is 46 years old as he has a date of birth of July 24, 1962.

20. He graduated from Campbell High School in June 1980.

21. In December 2004 Kaiser Permanente Medical Center in Santa Clara employed Respondent as a Pharmacy Technician. His employment at Kaiser was his first employment under the license that was issued to him in October 2004. But because the jail term caused him to have an extended period of absence without leave, Kaiser terminated Respondent's position on about July 2, 2008.

23. Respondent is married, but he has been separated from his wife since July 2005. Respondent has two children, who are seven years old and 11 years old.

24. Respondent avers that he never consumed alcoholic beverages while working as a pharmacy technician.

25. Respondent acknowledges that when he was about 14 years old, which was about 1976, he began to drink alcoholic beverages. In about 1987, when he was about 25 years old, Respondent first attended meetings of Alcoholics Anonymous (AA) in an attempt to "get sober." He avoided alcoholic beverages for about six months upon going to the AA meetings in 1987. (Even though his first DUI occurred in 1984, Respondent did not seek to avoid drinking intoxicating beverages until 1987.)

26. In about 1993, Respondent found that his first beverage of choice, beer, was not strong enough for his needs so that he began to regularly consume whiskey. The addition of whiskey to his drinking appetite occurred after he had a record of three DUI convictions.

27. In December 2003 Respondent made a second attempt to stop his abuse of alcoholic beverages. That effort began following an ultimatum issued from this wife that she would leave the marriage if Respondent did not stop drinking intoxicating beverages by "seeking help." Respondent enrolled in the Kaiser CDRP (Chemical Dependency Recovery Program) at the Santa Theresa Hospital. The program was an out-patient treatment experience for Respondent. (Respondent recalls that he had a prescription for anti-depression medication.) As a result of that program, Respondent remained "sober" for seven months, that is from December 2003 through July 2004.

In recent years, Respondent has received prescriptions of Librium so that he could avoid seizures during periods of time that he attempted to withdraw from use of alcoholic beverages.

Respondent's attempt to stop drinking through the Kaiser CDRP program failed when Respondent went to Reno alone. While in that gambling/resort city in July 2004, Respondent drank intoxicating beverages and then returned to imbibing when he returned home to Santa Clara County. Hence from July 2004 until October 2005, his drinking increased in frequency until the DUI crime in October 2005. (He drank five nights out of a week with his consumption of a six-pack of beer and "up to a half pint" of whisky.)

Beginning in January 2006, Respondent spent about 28 days in an in-patient alcohol treatment program. After the one-month in-patient program, Respondent enrolled in an out-patient counseling program until April 2006. (He claims that due to "falling out" with a counselor he dropped out of the program. Respondent objected to a counselor's admonition that he was failing the counseling program's objectives by him not attending a counseling session so as to go to a "show" with his family.)

In June 2006, Respondent secured a prescription of Librium, but he was not enrolled in a structured counseling program. He took the drug, drank liquor, drove a vehicle and was arrested on June 9, 2006. For about two or three months Respondent stayed sober after the June 2006 arrest.

Matters in Rehabilitation

28. Respondent spent nearly seven months in jail confinement following the July 2008 drunk driving conviction. While he was incarcerated, Respondent participated in the HOPE Substance Abuse Program, which is a behavior modification counseling program for DUI offenders, over a six-month period of time. (In addition to the two-month course that led to him receiving a certificate of completion on October 7, 2008, Respondent contributed about four months as a teacher's aide in the HOPE program.)

Respondent was released from jail on December 19, 2008.

29. Respondent proclaimed at the hearing of this matter that he has not consumed any form of alcoholic beverage since May 30, 2008, which was the date of his arrest. He believes that he will never again resort to alcoholic beverages.

30. Respondent was competent in performing work as a pharmacy technician while he was employed by Kaiser Permanente. To supplement and explain his testimony, Respondent offered a letter, dated April 26, 2009, by Annabella Foo, RPH, Clinical Pharmacist, Kaiser Pharmacy Resource Network. The letter expresses opinions regarding Respondent's positive attributes and qualities.

31. Although his former wife appears now to provide the primary financial support for his two children, Respondent contributes time to the care and supervision of the children. And although he cannot drive a vehicle to retrieve his children from school, on occasions Respondent walks his children to their mother's home after school hours.

Matters in Aggravation

32. Although the Accusation sets out that the Respondent received three convictions for drunk driving between November 30, 2005, and July 8, 2008, Respondent has a record of four earlier convictions. In November 1987, the California Municipal Court for Santa Clara County Judicial District convicted Respondent of violating Vehicle Code section 23152, subdivision (b). And as established at the hearing, the accusation's allegation was proven that in 1992 Respondent was convicted of the driving under the influence of alcoholic beverages. In addition, Respondent stated under oath at the hearing that he had a DUI conviction in 1982 when he was about 20 years old.

Matters that Suggest Respondent Is Not Fully Rehabilitated.

33. Respondent was released from jail confinement in mid-December 2008, which was less than one month before the date of Complainant's Accusation, which is January 6, 2009.

34. Due to the July 2008 conviction, Respondent will remain on probation until 2011.

35. Respondent has not secured an order under Penal Code section 1203.4 from the superior court for any of the drunk driving convictions he has sustained over the course of several years to establish that any one of the convictions has been expunged.

36. Respondent has not completed the 18-month Multiple Offender Program. He believes that he will complete the counseling program in July 2010. (Respondent is obligated to pay a fee of \$1,700 for his enrollment in the Multiple Offender Program.) In addition, Respondent's driver's license will not be restored until about 2011.

37. By his own acknowledgement, Respondent is an alcoholic with a lengthy history of abuse of alcoholic beverages. His condition is of such magnitude that he has had on no less than three occasions a prescription for Librium so as to prevent him from suffering seizures during periods that he has attempted to withdraw from the use of alcoholic beverages. Yet, currently he neither is enrolled in a treatment program for abusers of alcoholic beverages nor does he attend meetings of Alcoholics Anonymous (AA).

Respondent is not persuasive that he is capable of self-motivation in attending to avoiding abuse of alcoholic beverages. His assertions are inconsistent and are not persuasive. First he claims that he surrounds himself with people who are non-drinkers, but he notes that in the past all of his drinking was done alone as he was not a social drinker. He

further claims that his personal commitment to Biblical passages provides him with motivation, but he proclaims that he has never been a religious person and that he does not go to religious services or attend alcohol abuse counseling programs as offered by religious organizations such as the Salvation Army.

38. At the hearing of this matter, Respondent offered false and deceptive testimony under oath. And he was not truthful in past communication with the Board personnel.

Earlier in his direct testimony, Respondent referred to the DUI convictions as alleged in Complainant's accusation as being his "first," and then "second" DUI conviction. Only on cross-examination, did Respondent acknowledge that he had, at least, a total of six DUI convictions in his past. Under further cross-examination, he acknowledged that his first DUI conviction occurred in 1984.

On the Board's application addendum, dated on October 10, 2004, Respondent noted that he had been convicted of a crime. In his handwritten statement he represented that he has convictions as follows: "5/87. Misdemeanor dui. Campbell, CA [and] 7/92. Misdemeanor dui. Santa Clara, CA." He then wrote: "my last conviction was over twelve years ago. Since that time I have married, started a family and have learned from my past" But according to police in a report, dated June 9, 2006, Respondent had "six prior arrests for driving under the influence." And at the hearing, Respondent acknowledged that his first drunk driving conviction occurred in 1984.

39. Even though Respondent's history of criminal convictions was due to his abuse of alcoholic beverages; Respondent provided no evidence that since his release from a seven-month jail term that he has successfully enrolled in a voluntary program regarding the history of his alcohol abuse.

40. Respondent provided no competent evidence that since his convictions, he has enrolled in a course of higher learning.

41. Since his release from jail in December 2008, Respondent has not been employed.

Other Matters

42. Respondent called no witness to the hearing of this matter. No person appeared on Respondent's behalf to offer evidence pertaining to Respondent's reputation in his community for honesty and integrity. No person came to the hearing of this matter to describe Respondent's attitude towards his past criminal actions that led to the convictions mentioned above.

43. Respondent presented 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.

44. Because of his unemployed status, Respondent does not provide financial support for the upkeep of his two children.

45. Respondent is not receiving any form of psychiatric treatment or psychotherapy because his medical insurance ended upon the termination of his employment with Kaiser. (He takes two forms of antidepressant medication that he procures through a county program called "Urgent Care.")

Ultimate Findings

46. The weight of the evidence establishes that Respondent is not fully rehabilitated from his past conduct in violating the law. Respondent's untreated alcoholism and his avoidance of ongoing participation in a program such as AA show that he is not fit to be a licensee of the Board.

47. An insufficient amount of time has passed for the Department to determine that Respondent has attained sufficient rehabilitation so as enable him to continue to hold a license as a pharmacy technician.

Cost Recovery

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

| | | | |
|----|---|--|------------|
| A. | Board Inspector's Costs | | |
| | 4.5 hours at \$102 per hour | | \$459.00 |
| B. | Attorney General's Costs | | |
| | By Deputy Attorney General | | |
| | Regarding Investigation and Prosecution | | |
| | 23.50 hours at \$158 per hour | | \$3,713.00 |
| C. | Legal Analyst's Costs | | |
| | 3.5 hours at \$101 per hour | | \$353.50 |
| | TOTAL COSTS INCURRED: | | \$5,631.50 |

49. Respondent did not advance a meritorious defense in the exercise of his right to a hearing in this matter. And, Respondent cannot be seen, under the facts set out above, to have committed slight or inconsequential misconduct in the context of the Accusation. And, Respondent did not raise a "colorable challenge" to Complainant's Accusation.

The declaration by the deputy attorney general regarding the extent of the prosecution and the scope of the investigation appear to be commensurate with Respondent's misconduct.

But Respondent claims that currently he has limited financial resources. Respondent is unemployed. Moreover, Respondent must pay the rent on his apartment from assistance from his mother and others. And his expenses include nearly \$2,000 in fees to attend the court-ordered Multiple Offender Program. Respondent states that he is impaired or unable to pay the Board for the costs of investigation and prosecution.

A basis exists to warrant a reduction of the assessment against Respondent for the costs of investigation and prosecution incurred by Complainant. The imposition upon Respondent of the full costs of prosecution will unfairly penalize Respondent. All factors considered, the reasonable cost to be borne by Respondent is \$3,000.

50. The reasonable cost owed by Respondent to the Board is \$3,000.

LEGAL CONCLUSIONS

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

Cause exists for discipline against Respondent's license pursuant to Business and Professions Code section 4301, subdivision (h), by reason of the matters set forth in Factual Findings 5 with 6, 10 with 11, and 15 with 16.

2. Business and Professions Code 4301, subdivision (k), sets forth that the Board shall take action against any holder of a license who is guilty of unprofessional conduct that includes, "the conviction of more than one misdemeanor . . . involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances."

Cause exists for discipline against Respondent's license pursuant to Business and Professions Code section 4301, subdivision (k), by reason of the matters set forth in Factual Findings 3, 8, 13 and 32.

3. Business and Professions Code section 490 establishes that the Board "may suspend or revoke a license on the ground that the licensee has been convicted of a

crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.”

Business and Professions Code 4301, subdivision (l), provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct that includes, “the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.”

Cause exists for discipline against Respondent’s license pursuant to Business and Professions Code sections 490 and 4301, subdivision (l), by reason of the matters set forth in Factual Findings 3 through 5, 8 through 10 and 13 through 15.

4. Business and Professions Code section 4301, subdivision (f), prescribes 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 . . . 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.”

Moral turpitude is “an elusive concept incapable of precise general definition [But, conduct deemed to fall within the term’s meaning involves] an act of baseness, vileness, or depravity in the private and social duties which a [person] owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.” (*In re Craig* (1938) 12 Cal.2d 93, 97.) Moral turpitude also has been viewed as “dishonest or immoral” acts, not necessarily a crime. (*In re Higbie* (1972) 6 Cal.3d. 562, 570.) Moral turpitude connotes a disposition involving “general readiness to do evil.” (*People v. Castro* (1985) 38 Cal.3d 301, 314.)

a. Moral Turpitude and Multiple Drunk Driving Convictions

In *People v. Forster* (1994) 29 Cal.App.4th 1746, 1757, the court found moral turpitude to exist in the instance of a conviction for drunk driving under Vehicle Code section 23152. As in this matter, the offense in *Forster* involved a recidivist type crime that connoted “extremely dangerous activity.” In this instance of Respondent, a second and third conviction of drunk driving shows repeated “activity despite knowledge of such risks [and] is indicative of a ‘conscious indifference or I don’t care attitude concerning the ultimate consequences’ of the activity” (citing *People v. Ochoa* (1993) 6 Cal.4th 1199, 1208.) (*People v. Forster, supra*, 29 Cal.App.4th at 1757.) The *Forster* court further notes that multiple drunk driving misconduct is such repeated criminal behavior that “one can certainly infer ‘a depravity in the private and social duties which a man owes to his fellow man, or to society in general’” (*People v. Forster, supra*, 29 Cal.App.4th at 1757.)

Griffiths v. Medical Board of California (2002) 96 Cal.App.4th 757, at 770-771, sets out: “Driving while under the influence of alcohol . . . shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of duty owed to society. . . . Repeated convictions involving alcohol use . . . reflect poorly on

[Respondent's] common sense and . . . judgment. . . ." Respondent did not refute the clear logic of *Griffiths* that repeated convictions involving alcohol use reflects not only a lack of common sense and good judgment, but such serial drunk driving indicates a depravity in social duties that any individual owes to other users of public roadways and to society in general.

The California Supreme Court in *Taylor v. Superior Court* (1979) 24 Cal.3d 890, at 897-899, expressed: "One who willfully consumes alcoholic beverages to the point of intoxication, knowing that he thereafter must operate a motor vehicle, thereby combining sharply impaired physical and mental faculties with a vehicle capable of great force and speed, reasonably may be held to exhibit a conscious disregard for the safety of others. The effect may be lethal whether or not the driver had a prior history of drunk driving incidents. . . Drunken drivers are extremely dangerous people."

b. Moral Turpitude and Disobeying Court Orders

Marsh v. State Bar of California (1930) 210 Cal. 303, defines moral turpitude as conduct contrary to justice, honest, modesty or good morals. *In re Kelley* (1990) 52 Cal.3d 487, 495, prescribes that the disobedience of a court order demonstrates a lapse of good character and disrespect for the legal system. A person's conduct of disobeying a court order is contrary to justice, honesty, modesty or good morals. Accordingly, an individual's decision to drive a motor vehicle while such person is on probation due to a prior drunk driving conviction indicates that such subsequent drunk driving offense is a crime that involves moral turpitude.

Cause exists for discipline against Respondent's license pursuant to Business and Professions Code section 4301, subdivision (f), by reason of the matters set forth in Factual Finding 3, 8, 13 and 18.

5. Under the Disciplinary Guidelines of the California State Board of Pharmacy, 14 factors are set out for consideration in determining the penalty that may result from an administrative adjudication proceeding. Those factors have been weighed. In particular, matters that pertain to Respondent's background as well as matters in mitigation and matters in rehabilitation as described in Factual Findings 19 through 31 were considered in making the following order. And, the matters in aggravation, matters that reflect Respondent has not been fully rehabilitated, as well as other matters as set forth in Factual Findings 32 through 45 have been considered in making the following order.

The Disciplinary Guidelines at page 34 notes that "the board believes that revocation is the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include . . . violations of law including . . . personal misuse of . . . alcohol."

6. Respondent's record of having three recent DUI convictions requires a substantial passage of time to elapse so as to indicate the requisite attributes of sobriety, law-abidingness, integrity and personal stability that is integral to holding the status as a

pharmacy technician licensee. Importantly, the three DUIs alleged in the Accusation represent, at a minimum, Respondent's fourth, fifth and sixth DUIs.

Respondent's history of criminal activity strongly suggests he has an attitude of indifference or disdain for the law. Respondent's behavior reflects a disposition for personal gratification and demonstrates that he is not fully committed to societal requirements. When he committed the June 2006 and May 2008 drunk driving offenses he was on criminal probation due to an earlier conviction for a DUI offense.

Moreover, too little time has elapsed since the July 2008 conviction that imposed on Respondent a three-year term of probation. *In re Gossage* (2000) 23 Cal.4th 1080, 1104-1105, establishes, among other things, that from the standpoint of a licensing agency's regulatory oversight of licensees, rehabilitation from the adverse implication of a criminal conviction cannot begin to be accurately assessed until the applicant for licensure is beyond the restrictions of criminal probation and the prospect of incarceration no longer looms over the head of the license applicant. In this matter, Respondent will not be released from probation until July 2010. Hence at this time the Board of Pharmacy does not have the ability to fully assess Respondent's rehabilitation.

Costs of Investigation and Prosecution

7. Business and Professions 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 California Supreme Court's reasoning on the obligation of a licensing agency to fairly and conscientiously impose costs in administrative adjudication in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, 45 - 46, is persuasive and should be considered in this matter. Scrutiny of certain factors, which pertain to the Board's exercise of discretion to analyze or examine factors that might mitigate or reduce costs of investigation and prosecution upon a licensee found to have engaged in unprofessional conduct, are set in Factual Finding 49. And, measured against the concrete presentation by Complainant, Respondent offered meager evidence in his defense. Respondent's professed matters in mitigation, including his lack of employment, are insubstantial when compared to the Board's burden in prosecuting this matter and safeguarding the public from unprofessional licensees in the way of absolving all the costs incurred by Complainant. Due to Respondent's extent of criminal conduct, Complainant was compelled to thoroughly investigate Respondent's activities and to instruct its legal counsel to prepare a comprehensive prosecution of the disciplinary action. But Respondent's unemployed status coupled with his limited prospects for employment along with the costs associated with his enrollment in a multiple offender alcohol abuser counseling program warrant a reduction of the overall costs.

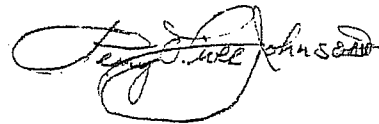
With all factors considered, the costs of investigation and prosecution as set forth in Factual Findings 48 and 50 are reasonable in a total amount of \$3,000.

ORDER

1. Pharmacy Technician license number TCH 58686 issued to Respondent Christopher M. Thompson is revoked.

2. Within thirty (30) days of the effective date of the Decision, Respondent Robert Chou shall pay \$3,000 to the California State 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: June 10, 2009



PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
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6 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 3237

11 **CHRISTOPHER M. THOMPSON**
12 884 Burbank Drive #7
Santa Clara, CA 95051

ACCUSATION

13 **Pharmacy Technician Registration No.**
14 **TCH 58686**

15 Respondent.

16
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, Department of Consumer Affairs.
21 2. On or about October 21, 2004, the Board of Pharmacy issued Pharmacy
22 Technician Registration Number TCH 58686 to Christopher M. Thompson (Respondent). The
23 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
24 brought herein and will expire on July 31, 2010, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board of Pharmacy (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

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4. **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.

5. **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:

“(f) 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.

“(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 (k) The conviction of more than one misdemeanor or any felony involving the
2 use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
3 combination of those substances.

4 (l) The conviction of a crime substantially related to the qualifications, functions,
5 and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
7 substances or of a violation of the statutes of this state regulating controlled substances or
8 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
9 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
10 The board may inquire into the circumstances surrounding the commission of the crime, in order
11 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
12 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
13 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty
14 or a conviction following a plea of nolo contendere is deemed to be a conviction within the
15 meaning of this provision. The board may take action when the time for appeal has elapsed, or
16 the judgment of conviction has been affirmed on appeal or when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a subsequent order under Section
18 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a
19 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information,
20 or indictment.”

21 6. **Section 490** of the Code provides, in pertinent part, that a board may
22 suspend or revoke a license on the ground that the licensee has been convicted of a crime
23 substantially related to the qualifications, functions, or duties of the business or profession for
24 which the license was issued.

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

26 “For the purpose of denial, suspension, or revocation of a personal or facility
27 license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions
28 Code, a crime or act shall be considered substantially related to the qualifications, functions or

1 duties of a licensee or registrant if to a substantial degree it evidences present or potential
2 unfitness of a licensee or registrant to perform the functions authorized by his license or
3 registration in a manner consistent with the public health, safety, or welfare.”

4 COSTS

5 8. Section 125.3 of the Code states, in pertinent part, that the Board may
6 request the administrative law judge to direct a licentiate found to have committed a violation or
7 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
8 and enforcement of the case.

9 DRUG INVOLVED

10 9. Librium is the brand name of Chlordiazepoxide. Chlordiazepoxide is a
11 Schedule IV controlled substance pursuant to Health and Safety Code section 11057(d).

12 FACTUAL BACKGROUND

13 10. On or about November 30, 2005, before the Santa Clara Superior Court,
14 Case No. CC508841, Respondent was convicted on a plea of nolo contendere of violating
15 Vehicle Code 23153(b), driving with a blood alcohol level of .08% or higher and concurrently
16 performing an act that causes bodily injury to another. The circumstances leading to
17 Respondent's conviction are as follows:

18 11. On or about October 24, 2005, Respondent was involved in a rear-end
19 automobile accident that caused injury to another. Respondent displayed visible signs of
20 intoxication including slurred speech, watery, bloodshot eyes, and an unsteady gait at the scene
21 of the accident. Respondent admitted to drinking alcohol and taking Librium prior to driving.

22 12. On or about June 14, 2006, before the Santa Clara Superior Court, Case
23 No. CC632434, Respondent was convicted on a plea of nolo contendere of violating Vehicle
24 Code 23152(a), driving under the influence of alcohol. Respondent admitted his prior conviction
25 in Santa Clara Superior Court, Case No. CC508841. The circumstances leading to Respondent's
26 conviction are as follows:

27 13. On or about June 9, 2006, Respondent was involved in an automobile
28 accident. Respondent left the scene of the accident without exchanging his information with the

1 SECOND CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct-Convictions Relating to Alcohol)

3 17. Respondent is subject to disciplinary action under section 4301(k) of the
4 code in that Respondent was convicted of more than one misdemeanor involving the
5 consumption of alcoholic beverages. The circumstances of Respondents' convictions are
6 described in paragraphs 10, 12, and 14, above.

7 THIRD CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct- Conviction of Substantially Related Offense)

9 18. Respondent is subject to disciplinary action under sections 490 and 4301(l)
10 of the code in that Respondent was convicted of crimes that are substantially related to
11 qualifications, functions, and duties of a licensed pharmacy technician. The circumstances of
12 Respondents convictions are described in paragraphs 10, 12, and 14, above.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct- Acts of Moral Turpitude)

15 19. Respondent is subject to disciplinary action under section 4301(f) of the
16 code in that Respondent was involved in acts of moral turpitude. The circumstances are
17 described in paragraphs 11, 13, and 15, above.

18 DISCIPLINARY CONSIDERATIONS

19 20. To determine the degree of discipline, if any, to be imposed on
20 Respondent, Complainant alleges that in or about 1992 Respondent was convicted of driving
21 under the influence of alcohol or drugs or both.

22 21. To determine the degree of discipline, if any, to be imposed on
23 Respondent, Complainant alleges that in or about 1987 Respondent was convicted of driving
24 under the influence of alcohol or drugs or both.

25 PRAYER

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

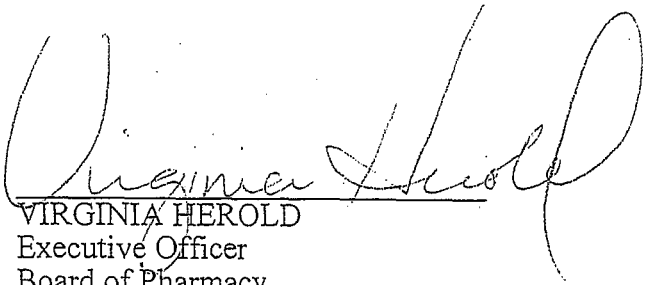
28 1. Revoking or suspending Pharmacy Technician Registration Number TCH

1 58686, issued to Christopher Merrill Thompson Christopher Merrill Thompson.

2 2. Ordering Christopher Merrill Thompson to pay the Board of Pharmacy the
3 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
4 Professions Code section 125.3;

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

6
7 DATED: 1/6/09



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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