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

In the Matter of the Accusation Against:

Case No. 3397

NICHOLAS ANDREW PAPAGEORGE

1325 Dawn Road Nipomo, CA 93444

Pharmacy Technician Registration No. TCH 48940

Respondent.

DECISION AND ORDER

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

This decision shall become effective on May 11, 2011.

It is so ORDERED April 11, 2011.

BOARD OF PHARMACY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

By

STANLEY C. WEISSER

Board President

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1	Kamala D. Harris		
2	Attorney General of California KAREN B. CHAPPELLE Supervising Deputy Attorney General ANTONIO LOPEZ, JR. Deputy Attorney General State Bar No. 206387 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013		
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6	Telephone: (213) 897-2536 Facsimile: (213) 897-2804		
7	Attorneys for Complainant	•	
8	BEFORE THE BOARD OF PHARMACY		
9	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
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11	In the Matter of the Accusation Against:	Case No. 3397	
12	NICHOLAS ANDREW PAPAGEORGE 243 Colt Lane		
13	Nipomo, CA 93444	STIPULATED SURRENDER OF LICENSE AND ORDER	
14	Pharmacy Technician Reg. No. TCH 48940		
15	Respondent.		
16		•	
17	In the interest of a prompt and speedy resolution of this matter, consistent with the public		
18	interest and the responsibility of the Board of Pharmacy of the Department of Consumer Affairs		
19	the parties hereby agree to the following Stipulated Surrender of License and Order which will be		
20	submitted to the Board for approval and adoption as the final disposition of the Accusation.		
21	<u>PARTIES</u>		
22	1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.		
23	She brought this action solely in her official capacity and is represented in this matter by Kamala		
24	D. Harris, Attorney General of the State of California, by Antonio Lopez, Jr., Deputy Attorney		
25	General.		
26	2. Nicholas Andrew Papageorge (Respondent) is represented in this proceeding by		
27	Attorney Ed Gonzalez, 1300 Clay St., Suite 600, Oakland, CA 94612.		
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3. On or about October 3, 2003, the Board of Pharmacy issued Pharmacy Technician Registration No. TCH 48940 to Nicholas Andrew Papageorge (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought in Accusation No. 3397 and will expire on December 31, 2012, unless renewed.

JURISDICTION

4. Accusation No. 3397 was filed before the Board of Pharmacy (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on January 26, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 3397 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

- 5. Respondent has carefully read, has fully discussed with counsel and understands the charges and allegations in Accusation No. 3397. Respondent also has carefully read, has fully discussed with counsel and understands the effects of this Stipulated Surrender of License and Order.
- 6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.
- 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent understands all the charges and allegations in Accusation No. 3397 and has fully discussed them with counsel. Respondent hereby admits fully all the allegations and charges contained in Accusation No. 3397. Respondent understands that these admissions constitute cause for discipline upon his Pharmacy Technician Registration.

- 9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that the charges in the Accusation are true and that those charges constitute cause for discipline. Respondent hereby gives up his right to contest that cause for discipline exists based on those charges.
- 10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Pharmacy Technician Registration without further process.

CONTINGENCY

- 11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.
- 12. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.
- 13. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.
- 14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

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ORDER

IT IS HEREBY ORDERED that Pharmacy Technician Registration No. 48940, issued to Respondent Nicholas Andrew Papageorge, is surrendered and accepted by the Board of Pharmacy.

- 15. The surrender of Respondent's Pharmacy Technician Registration and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.
- 16. Respondent shall lose all rights and privileges as a Pharmacy Technician in California as of the effective date of the Board's Decision and Order.
- 17. Respondent shall cause to be delivered to the Board his wall license certificate and, if one was issued, his pocket license on or before the effective date of the Decision and Order.
- 18. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a new application for licensure. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. 3397 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.
- 19. Upon relicensure of the license, Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$6500.00.
- 20. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 3397 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.
- 21. Respondent shall not apply for licensure for three (3) years from the effective date of the Board of Pharmacy's Decision and Order.

1	21. Respondent shall not apply for licensure for three (3) years from the effective date of	
2	the Board of Pharmacy's Decision and Order.	
3	ACCEPTANCE	
4	I have on refully read the Stipulated Surrender of License and Order and have discussed it	
5	fully with counsel. I understand the stipulation and the effect it will have on my Pharmacy	
6	Technician Registration. I enter into this Stipulated Surrender of License and Order voluntarily,	
7	knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of	
8	Pharmacy.	
9	DATED: 2/7/11	
10	Nicholas Andrew Papageorge	
1	Respondent	
2	<u>.</u>	
3	DATED: 2/8/11 2000	
15	. Ed Gonzalez	
16	Counsel for Respondent	
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18		
19	VIN 1010E HIS Despetation periodises of Energian and Court 12 Holos, respectively, assuments	
20	for consideration by the Board of Pharmacy of the Department of Consumer Affairs.	
21	Dated: February 3, 2011 Respectfully submitted,	
22	KAMALA D. HARRIS Attorney General of California	
23	KAREN B. CHARPELLE Supervising Deputy Attorney General	
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25	ANTONIO LOPEZ, JR.	
26	Deputy Attorney General Attorneys for Complainant	
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ì	Stipulated Surrender of License (Case No. 3397)	

SECEIVED BY CALIF EDMUND G. BROWN JR. 2009 DEC 14 AM 9: 55 Attorney General of California 2 MARC D. GREENBAUM Supervising Deputy Attorney General 3 KIMBERLEY J. BAKER-GUILLEMET Deputy Attorney General 4 State Bar No. 242920 300 So. Spring Street, Suite 1702 Los Angeles, CA 90013 5 Telephone: (213) 897-2533 6 Facsimile: (213) 897-2804 Attorneys for Complainant 7 BEFORE THE 8 **BOARD OF PHARMACY** DEPARTMENT OF CONSUMER AFFAIRS 9 STATE OF CALIFORNIA 10 In the Matter of the Accusation Against: Case No. 3397 11 NICHOLAS ANDREW PAPAGEORGE 12. 1325 Dawn Road Nipomo, CA 93444 ACCUSATION 13 Pharmacy Technician Registration No. TCH 48940 14 Respondent. 15 16 17 Complainant alleges: 18 **PARTIES** 19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity 20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs. 21 On or about October 3, 2003, the Board of Pharmacy issued Pharmacy Technician 22 Registration Number TCH 48940 to Nicholas Andrew Papageorge (Respondent). The Pharmacy 23 Technician Registration was in full force and effect at all times relevant to the charges brought 24 herein and will expire on December 31, 2010, unless renewed. 2.5 /// 26 /// 27 /// 28 ///

JURISDICTION

- 3. This Accusation is brought before the Board of Pharmacy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. 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.

. .

- "(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
- "(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.

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- "(p) Actions or conduct that would have warranted denial of a license."
- 5. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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

FIRST CAUSE FOR DISCIPLINE

(Substantially Related Convictions)

- 7. Respondent is subject to disciplinary action under section 4301, subdivision (1) of the Code in that he was convicted of crimes substantially related to the functions, duties, and qualifications of a licensee, as follows:
- 8. On or about September 6, 2007, in the Superior Court of California, County of Santa Barbara, in the case entitled, *People of the State of California v. Nicholas Andrew Papageorge* (Super. Ct. Santa Barbara County, 2007, No. P436238), Respondent was convicted on his plea of nolo contendere of violating Vehicle Code section 23152, subdivision (a) (driving while under the influence of a drug with a Prior), a misdemeanor.
- a. The circumstances of the crime are that on or about June 6, 2007, a California Highway Patrol (CHP) officer was called to the scene of a single vehicle collision. While driving his vehicle on a California freeway, Respondent veered left causing the left side of his vehicle to collide with the guardrail. The CHP officer observed that Respondent exhibited the following objective signs of intoxication: unsteady gait, slow speech, low volume speech and droopy eyelids. In addition, the officer observed that he was fidgety, sluggish and agitated.
- b. The officer attempted to administer several Field Sobriety Tests (F.S.T.s) to Respondent, including, the Romberg test, the One Leg Stand, the Hand Pat, the Finger Count and the Horizontal Gaze Nystagmus. Respondent did not properly complete any of the F.S.T.s. Based upon the circumstances surrounding the collision, Respondent's objective signs of intoxication and inability to perform the F.S.T.s, the officer formed the opinion that he was

driving under the influence of drugs at the time of the collision. The officer placed Respondent under arrest.

- 9. On or about April 25, 2007, in the Superior Court of California, County of San Luis Obispo, in the case entitled, *People of the State of California v. Nicholas Andrew Papageorge* (Super. Ct. San Luis Obispo County, 2007, No. M398649), Respondent was convicted on his plea of nolo contendere of violating Penal Code section 664 as it relates to Vehicle Code section 23152, subdivision (b) (attempting to drive while under the influence of alcohol), a misdemeanor.
- a. The circumstances of the crime are that on or about January 20, 2007, a California Highway Patrol ("CHP") officer was called to the scene of a single vehicle collision. When the officer arrived at the scene, he contacted Respondent. Respondent denied being the driver of the vehicle. While talking with Respondent, the officer observed that Respondent exhibited the following signs of intoxication: watery, glassy eyes, weaving while standing and an odor of an alcoholic beverage emanating from his person. The officer was unable to administer any Field Sobriety Tests (F.S.T.s) to Respondent because Respondent was unwilling to cooperate and follow the directions. Based upon the officer's observations and statements he received from witnesses, the officer arrested Respondent for violating Vehicle Code section 23152, subdivision (a).
- 10. On or about August 7, 2006, in the Superior Court of California, County of San Luis Obispo, in the case entitled, *People of the State of California v. Nicholas Andrew Papageorge* (Super. Ct. San Luis Obispo County, 2006, No. M380693), Respondent was convicted on his plea of nolo contendere of violating Penal Code section 594, subdivision (b), subsection (1) (maliciously and unlawfully defacing, damaging, and destroying real and personal property which belonged to another, in the amount of four hundred dollars (\$400.00) or more), a misdemeanor.
- a. The circumstances of the crime are that on or about October 1, 2005, a City of Pismo Beach Department Police Officer was dispatched to a restaurant for a report of a vehicle that had been "keyed." During an interview at the Police Department on or about October 2, 2005, Respondent admitted that he damaged the vehicle using his car keys.

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SECOND CAUSE FOR DISCIPLINE

(Commission of Act Involving Moral Turpitude)

11. Respondent is subject to disciplinary action under section 4301, subdivision (f) of the Code in that he committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in paragraphs 7 through 10. Complainant refers to, and by this reference incorporates the allegations set forth above in paragraphs 7-10, inclusive, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substance)

12. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the Code in that he administered to himself a controlled substance, as set forth in paragraphs 7 through 8 above. Complainant refers to, and by this reference incorporates the allegations set forth above in paragraphs 7 through 8, inclusive, as though set forth fully.

FOURTH CAUSE FOR DISCIPLINE

(Commission of More Than One Misdemeanor Involving the Use of Dangerous Drug and/or Alcoholic Beverage)

13. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the Code in that he was convicted of a misdemeanor involving the use of a dangerous drug and a misdemeanor involving the consumption of an alcoholic beverage, as set forth in paragraphs 7 through 9 above. Complainant refers to, and by this reference incorporates the allegations set forth above in paragraphs 7 through 9, inclusive, as though set forth fully.

FIFTH CAUSE FOR DISCIPLINE

(Conduct Warranting License Denial)

14. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code in that he engaged in conduct warranting denial of his license, as set forth in paragraphs 7 through 10 above. Complainant refers to, and by this reference incorporates the allegations set forth above in paragraphs 7 through 10, inclusive, as though set forth fully.

PRAYER

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

- 1. Revoking or suspending Pharmacy Technician Registration Number TCH 48940, issued to Nicholas Andrew Papageorge.
- 2. Ordering Nicholas Andrew Papageorge to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
 - 3. Taking such other and further action as deemed necessary and proper.

DATED: 12/30/09

VIRGINIA MEROLD Executive Officer

Board of Pharmacy

Department of Consumer Affairs

State of California Complainant

LA2009603935 accusation.rtf