

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

In the Matter of the Accusation Against:

**ANDRE CARL ROBINSON**  
8450 Via Mallorca, Unit 232  
La Jolla, CA 92037

Pharmacy Technician No. TCH 70130

Respondent.

Case No. 3502

OAH No. 2010060864

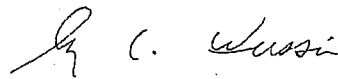
**DECISION**

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 July 27, 2011.

It is so ORDERED June 27, 2011.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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**PROPOSED DECISION**

Carla Nasoff, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on April 14, 2011, in San Diego, California.

Diane de Kervor, Deputy Attorney General, Department of Justice, represented complainant Virginia Herold, Executive Officer of the Board of Pharmacy.

Andre Carla Robinson, (Robinson) represented himself and was present throughout the hearing.

The matter was submitted on April 14, 2011.

**FACTUAL FINDINGS**

*Jurisdictional Matters*

1. On August 24, 2006, the board issued to respondent Original Pharmacy Technician Registration No. TCH70130. Respondent's registration is in full force until December 31, 2011.
2. On May 11, 2010, complainant signed the accusation in her official capacity. On May 24, 2010, the accusation and other required jurisdictional documents were served on respondent. On June 2, 2010, respondent signed and thereafter filed a notice of defense. On July 8, 2010, complainant served on respondent a notice of continued hearing.
3. On April 14, 2011, the record was opened, jurisdictional documents were received, sworn testimony was given and documentary evidence was introduced. On April 14, 2011, closing arguments were presented and the matter was submitted.

### *Summary of Accusation*

4. The accusation alleged that on October 30, 2008, respondent was arrested in an undercover vice operation. The accusation stated respondent attempted to solicit an undercover officer for prostitution in exchange of Suboxone, a controlled substance used in the treatment of opiate addiction. The allegation stated respondent posted his phone number on Craig's list, texted the undercover officer and met with her in a hotel. He brought with him six Suboxone pills in exchange for sex. He was then arrested. The two causes for discipline are: (i) Disturbing the Peace and (ii) Possession of a Controlled Substance without a Prescription.

### *Conviction*

5. On August 7, 2009, respondent pled guilty to Penal Code section 647 subdivision (b), (disorderly conduct, engaging in any act of prostitution), a misdemeanor. He solicited an act of prostitution that involved the exchange of drugs for sex. He was placed on summary probation for three years, ordered to pay total fines of \$218, spent eight days in jail and ordered to complete an HIV and prostitution program. He completed the courses and paid all fines and fees.

6. On January 7, 2010, respondent petitioned the Court to reduce his misdemeanor conviction to an infraction. The respondent withdrew his previously entered plea and entered a plea to Penal Code section 415 subdivision (3), (disturbing the peace with offensive words in a public place which are inherently likely to provoke an immediate violent reaction), a misdemeanor.

### *Officer Roxie Vigil testimony*

7. Officer Vigil was called on behalf of the agency. She has been employed by the San Diego Police Department for over ten years. She testified that on October 31, 2008, she prepared an Investigator's Report describing the incident of the October 30, 2008 arrest. At the time of the incident, she was assigned to the Vice Operations Unit. She communicated with respondent on Craig's list and posed as a prostitute. Respondent texted her, and wanted to trade Suboxone, a controlled substance, for sex. They made arrangements to meet at a hotel. Once at the hotel, Robinson showed her the pills and informed her of their street value. In exchange for the pills he wanted to have sex. He was then immediately arrested. He was charged with possession of a controlled substance; possession of a controlled substance for sale; transportation of a controlled substance and agreement to prostitution. The pills were later tested and proved to be buprenorphine, (Suboxine brand name), a schedule III narcotic and used as a treatment for opiate addiction.

### *Respondent Robinson's testimony*

8. Robinson testified that he obtained Suboxine from his brother who was a drug addict. Respondent admitted he wanted to exchange the pills for sex. He admitted he was in possession of a controlled substance without a prescription, but testified this was his first and

only time. He further admitted he went to the hotel, met with Officer Vigil, but did not recall any of their conversations. He admitted he had access to narcotics while working as a pharmacy tech but never took drugs from his place of employment. Respondent testified he did not believe the conduct of trafficking narcotics was related to being a Pharmacy Technician. He testified several times that he was not convicted of trafficking drugs, only disturbing the peace. He further testified that his only crime was that of 'loneliness.'

Robinson was placed on probation for three years, completed a course on HIV and STD's as well as a class on prostitution. He was subsequently charged with disturbing the peace and testified he will file documents to expunge the conviction. Respondent's brother, who provided him the narcotics, is now in a drug rehabilitation program and is no longer an addict. Respondent remains in contact with his brother.

#### *Respondent's Background, Rehabilitation and Present Circumstances*

9. Robinson was born in 1980. He graduated Valhalla High School in 1999. From 1999 to 2002, he attended Cuyamaca College but did not graduate. From 2005 to 2006, he completed a nine-month Pharmacy Technician course at El Cajon Valley Career College. In 2006, he passed the Pharmacy Technician Certification Board exam. From 2006 to 2009, he attended City Mesa College and obtained an Associates of Science in Business Administration. He was on the dean's honor roll with a GPA of 3.7. In 2011, he attended San Diego State University full-time and anticipates receiving his bachelor's degree in approximately two years.

10. As for his work history, from 1999 to 2001, he worked in restaurants and retail stores. From 2006-2008, he worked as a Pharmacy Technician at Scripps Hospital in San Diego, California. From 2008 to present, he worked per diem for both a staffing agency and UCSD as a Pharmacy Technician. In 2011, he renewed his National Certification as a Pharmacy Technician.

11. He denied any performance problems as a Pharmacy Technician. He has never taken any drugs from his work site. He has never been disciplined or fired from his employment. He admitted he smoked marijuana during his high school years until 2009. He no longer smokes marijuana.

12. He currently spends his time studying and only works five to ten hours a month to supplement his income as a Pharmacy Technician. He submitted letters of recommendation from his School's Dean and President regarding his academic achievements, but none of those letters indicated that they were aware of the circumstances surrounding his conviction. His ultimate goal is to work in the business field and not as a Pharmacy Technician.

#### *Costs of Investigation and Prosecution*

13. Complainant submitted a certification of investigative costs which totaled \$6,009.50 for attorney, paralegal and inspector's fees.

Complainant's counsel submitted a certification of prosecution costs. The vast majority of this work was billed by the deputy attorney general who tried the case.

All costs claimed were reasonably incurred.

## LEGAL CONCLUSIONS

1. The basic reason for disciplinary action against occupational licensees is the protection of the public against unethical and dishonest conduct on the part of those engaged in the licensed activity. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456, quoting from *Marks v. Watson* (1952) 112 Cal.App.2d 196, 200.)<sup>1</sup> "The purpose of an administrative proceeding concerning the revocation or suspension of a license is not to punish the individual; the purpose is to protect the public from dishonest, immoral, disreputable or incompetent practitioners." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)
2. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The burden of proof in this proceeding is thus on complainant.
3. Pharmacy technicians are professionals, and accordingly the clear and convincing standard of proof is applicable to this proceeding. (*Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856-857; *Furman v. State Bar* (1938) 12 Cal.2d 212, 229; *James v. Board of Dental Examiners* (1985) 172 Cal.App.3d 1096, 1105.)
4. "The key element of clear and convincing evidence is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence." (*People v. Mabini* (2001) 92 Cal.App.4th 654, 662.) This standard is less stringent than proof beyond a reasonable doubt. (*Ettinger v. Board of Medical Quality Assurance, supra*, 135 Cal.App.3d at 856.)
5. Business and Professions Code section 4300 provides that every license issued may be suspended or revoked.
6. Business and Professions Code section 482 subdivision (b) states that each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when considering suspension or revocation of a license under section 490.

7. Business and Professions Code section 490 states:

(a) In addition to any other action that a board is permitted to take against a licensee, a 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.

(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law.

8. Business and Professions Code section 493 states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the

licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question. As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

9. Business and Professions Code section 4022 sections (a)(b)(c) states:

'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' "Rx only," or words of similar import.

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

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

10. Business and Professions Code section 4059 provides in part:

"(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7."

11. Business and Professions Code section 4060 provides in part:

"No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic

doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, a physician assistant pursuant to Section 3502.1, a naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either Section 4052.1 or 4052.2. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.”

12. Business and Professions Code section 4301 provides in part:

“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:

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.”

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the



meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

...

13. Business and Professions Code section 4313 states that in determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

14. California Code of Regulations, title 16, section 1769 (b)(1)-(5) states:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Total criminal record.
- (3) The time that has elapsed since commission of the act(s) or offense(s).
- (4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

15. California Code of Regulations, title 16, section 1770 states:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, 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 or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

16. Business and Professions Code section 125.3 provides in pertinent part:

“(a) . . . in any order issued in resolution of a disciplinary proceeding before any board within the department . . . the board may request the administrative law judge to direct a licentiate found to have committed a violation . . . of the licensing act to pay a sum not to exceed the reasonable costs of investigation and enforcement of the case.

. . .

(d) The administrative law judge shall make a proposed finding of the amount of the reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). . . .”

17. The board’s Manual of Disciplinary Guidelines and Model Disciplinary Orders sets forth four categories of violations. The most serious are in Category III and IV, which includes, “knowing or willfully violating laws or regulations pertaining to dispensing or distributing dangerous drugs or controlled substances,” “possession for sale.” Business and Professions Code section 4301, subdivision (j) is explicitly included within Category III. The minimum penalty under the guidelines for Category III offenses is stayed revocation, a 90-day suspension, and three to five years probation on standard and appropriate optional terms. The maximum penalty of Category III is straight revocation. As to Category IV, the penalty is revocation.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors to be considered include actual or potential harm to the public or to any consumer, prior disciplinary record, prior warnings of record, number and/or variety of current violations, nature and severity of the acts under consideration, mitigating and rehabilitation evidence, time passed since the acts, whether the conduct was intentional

or negligent, and financial benefit to the respondent from the misconduct. No single or combination of the above factors is required to justify the minimum and maximum penalty as opposed to an intermediate one. Respondent has the burden of demonstrating rehabilitation.

Further:

“The board files cases against pharmacy technicians where the violation(s) involve significant misconduct on the part of the licensee. The board believes that revocation is the appropriate penalty when grounds for discipline are found to exist. Grounds for discipline include, but are not limited to the following violation(s) of law(s) involving:

- Possession of dangerous drugs and/or controlled substances
- Use of dangerous drugs and/or controlled substances
- Possession for sale of dangerous drugs and/or controlled substances
- Personal misuse of drugs or alcohol

If revocation is not imposed, the board recommends a minimum of a Category III level of discipline be imposed on the pharmacy technician. This would include suspension and probation.”

18. As noted above, all claimed costs were reasonably incurred. Further, the Deputy Attorney General who represented complainant was very well prepared, exhibited great skill, and conducted herself in an exemplary professional manner throughout the course of the hearing.

Cause exists under Business and Professions Code section 125.3 to issue an order requiring respondent to pay the total amount of investigative and prosecutorial costs claimed of \$6,009.50.

### *Evaluation*

The evidence established that respondent was convicted of disturbing the peace. He also testified at the administrative hearing that he was in possession of a controlled substance without a prescription. Respondent readily admitted at the administrative hearing that although he tried to sell the controlled substance for sex, his only crime was that of ‘loneliness.’ This lack of judgment and insight demonstrates he has not yet taken responsibility for his actions. Many people who are lonely do not resort to illegal activity. His lack of judgment and insight are further evident when he testified that he did not believe that the conduct of trafficking narcotics was related to being a Pharmacy Technician. The imposition of discipline is thus authorized pursuant to Business and Professions Code section 4301. Outright revocation of respondent’s registration is required for the protection of the public.

ORDER

Pharmacy Technician Registration No. TCH 70130, issued to respondent Andre Carl Robinson on August 24, 2006, is revoked. Respondent shall relinquish his pocket technician registration to the board within ten days of the effective date of this decision. Respondent may not petition the board for reinstatement of his revoked technician registration for three years from the effective date of this decision.

A condition of reinstatement shall be that the respondent is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the board.

A further condition of reinstatement shall be that prior to reinstatement of his technician registration, respondent shall have reimbursed the board for its costs of investigation and prosecution in the amount of \$6,009.50. If the respondent fails to pay the amount specified, his technician registration shall remain revoked.

DATED: May 4, 2011

A handwritten signature in cursive script, reading "Carla Nasoff", written over a horizontal line.

CARLA NASOFF  
Administrative Law Judge  
Office of Administrative Hearings

1 EDMUND G. BROWN JR.  
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*Attorneys for Complainant*

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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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12 In the Matter of the Accusation Against:

Case No. 3502

13 **ANDRE CARL ROBINSON**  
14 **8450 Via Mallorca, Unit 232**  
**La Jolla, CA 92037**

**A C C U S A T I O N**

15 **Pharmacy Technician Registration**  
16 **No. TCH 70130**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

22 2. On or about August 24, 2006, the Board of Pharmacy issued Pharmacy Technician  
23 Registration Number TCH 70130 to Andre Robinson (Respondent). The Pharmacy Technician  
24 Registration will expire on December 31, 2011, unless renewed.

25 **JURISDICTION**

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

1 4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a  
2 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the  
3 period within which the license may be renewed, restored, reissued or reinstated.

4 5. Section 4300 of the Code states that "(a) Every license issued may be suspended or  
5 revoked."

#### 6 STATUTORY PROVISIONS

7  
8 6. Code section 482 states:

9 Each board under the provisions of this code shall develop criteria to evaluate the  
10 rehabilitation of a person when:

11 . . . .

12 (b) Considering suspension or revocation of a license under Section 490.

13 Each board shall take into account all competent evidence of rehabilitation  
14 furnished by the applicant or licensee.

15 7. Section 490 of the Code states, in pertinent part:

16 A board may suspend or revoke a license on the ground that the licensee has been  
17 convicted of a crime, if the crime is substantially related to the qualifications, functions, or  
18 duties of the business or profession for which the license was issued. A conviction within  
19 the meaning of this section means a plea or verdict of guilty or a conviction following a  
20 plea of nolo contendere. . . .

21 8. Code section 493 states:

22 Notwithstanding any other provision of law, in a proceeding conducted by a  
23 board within the department pursuant to law to deny an application for a license or  
24 to suspend or revoke a license or otherwise take disciplinary action against a person  
25 who holds a license, upon the ground that the applicant or the licensee has been  
26 convicted of a crime substantially related to the qualifications, functions, and duties  
27 of the licensee in question, the record of conviction of the crime shall be conclusive  
28 evidence of the fact that the conviction occurred, but only of that fact, and the board  
may inquire into the circumstances surrounding the commission of the crime in  
order to fix the degree of discipline or to determine if the conviction is substantially  
related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and  
'registration.'

9. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self  
use in humans or animals, and includes the following:

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(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

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

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

10. Section 4059 of the Code states, in pertinent part:

(a) A person may not furnish any dangerous drug, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7. A person may not furnish any dangerous device, except upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7.

11. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified nurse midwife pursuant to Section 2746:51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

12. 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:

...

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

...

///

1 (l) The conviction of a crime substantially related to the qualifications, functions,  
2 and duties of a licensee under this chapter. The record of conviction of a violation of  
3 Chapter 13 (commencing with Section 801) of Title 21 of the United States Code  
4 regulating controlled substances or of a violation of the statutes of this state regulating  
5 controlled substances or dangerous drugs shall be conclusive evidence of  
6 unprofessional conduct. In all other cases, the record of conviction shall be conclusive  
7 evidence only of the fact that the conviction occurred. The board may inquire into the  
8 circumstances surrounding the commission of the crime, in order to fix the degree of  
9 discipline or, in the case of a conviction not involving controlled substances or  
10 dangerous drugs, to determine if the conviction is of an offense substantially related to  
11 the qualifications, functions, and duties of a licensee under this chapter. A plea or  
12 verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a  
13 conviction within the meaning of this provision. . . .

8 . . . .  
9 (o) Violating or attempting to violate, directly or indirectly, or assisting in or  
10 abetting the violation of or conspiring to violate any provision or term of this chapter or  
11 of the applicable federal and state laws and regulations governing pharmacy, including  
12 regulations established by the board or by any other state or federal regulatory agency.

12 . . . .  
13 12. Section 4313 of the Code states:

14 In determining whether to grant an application for licensure  
15 or whether to discipline or reinstate a license, the board shall give  
16 consideration to evidence of rehabilitation. However, public  
17 protection shall take priority over rehabilitation and, where  
18 evidence of rehabilitation and public protection are in conflict,  
19 public protection shall take precedence.

#### 18 REGULATIONS

19 13. California Code of Regulations, title 16, section 1769 states, in pertinent part:

20 (b) When considering the suspension or revocation of a facility or a personal  
21 license on the ground that the licensee or the registrant has been convicted of a crime,  
22 the board, in evaluating the rehabilitation of such person and his present eligibility for  
23 a license will consider the following criteria:

24 (1) Nature and severity of the act(s) or offense(s).

25 (2) Total criminal record.

26 (3) The time that has elapsed since commission of the act(s) or offense(s).

27 (4) Whether the licensee has complied with all terms of parole, probation,  
28 restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

///



1 14. California Code of Regulations, title 16, section 1770 states:

2 For the purpose of denial, suspension, or revocation of a personal or  
3 facility license pursuant to Division 1.5 (commencing with Section 475) of the  
4 Business and Professions Code, a crime or act shall be considered substantially  
5 related to the qualifications, functions or duties of a licensee or registrant if to a  
6 substantial degree it evidences present or potential unfitness of a licensee or  
7 registrant to perform the functions authorized by his license or registration in a  
8 manner consistent with the public health, safety, or welfare.

6 **COST RECOVERY**

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

11 **DRUG**

12 16. Suboxone, the brand name for Buprenorphine and Naloxone, is a Schedule III  
13 controlled substance as designated by 21 Code of Federal Regulations section 1308.13(e)(2)(i),  
14 and a dangerous drug pursuant to Code section 4022. Suboxone is used in the treatment of opiate  
15 addiction.

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(December 21, 2009 Criminal Conviction –  
Disturbing the Peace on October 30, 2008)**

18 17. Grounds exist to revoke Respondent's license pursuant to Code section 4300,  
19 section 4301, subdivision (l) as well as 490 and 493 for a criminal conviction that is substantially  
20 related to the qualifications, functions, and duties of a Pharmacy Technician. On August 7, 2009,  
21 in a case entitled *People vs. Andre Robinson* (San Diego Superior Court Case No. 084503),  
22 Respondent was convicted by a plea of guilty to a violation of Penal Code section 647(b)  
23 (prostitution), a misdemeanor. After timely completion of a prostitution impact program, HIV  
24 education, and HIV testing, on December 21, 2009, Respondent was permitted to withdraw this  
25 guilty plea and instead pled guilty to a violation of Penal Code section 415(3) (disturbing the  
26 peace with offensive words in a public place likely to provoke a violent reaction), a misdemeanor.

27 18. The facts and circumstances surrounding this cause for discipline are as  
28 follows: On October 30, 2008, the police were conducting an undercover vice operation.

1 Respondent attempted to solicit an undercover officer for prostitution. The Officer posted a  
2 phone number on Craig's list. Respondent texted her and stated that he wanted to trade suboxone  
3 ("its like ecstasy") for sex. The undercover officer texted back and asked Respondent to call her.  
4 Robinson called her and asked if she wanted to trade sex for the pills. He told her he had 4 to 6  
5 pills and that she could get "30 to 50 dollars per pill." The undercover officer asked him to bring  
6 6 pills and Respondent asked to see her. The undercover officer gave Respondent the location  
7 where they were operating from. Respondent arrived, sat on the bed, and pulled out a bag with  
8 six orange pills that were later identified as suboxone. He stated that he wanted sex for the pills,  
9 at which point he was arrested. In his plea agreement, respondent admitted that he "did solicit an  
10 act of prostitution."

11 19. On December 21, 2009, upon the change of his plea, Respondent remained on the  
12 previously imposed three years informal probation, including the prostitution intervention  
13 program, H.I.V. education, and \$593.00 in fines and fees.

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(Possession of Controlled Substances Without a Prescription)**

16 17. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section  
17 4060, section 4301, subdivisions (j) and (o) for possession of a controlled substance without a  
18 prescription. The facts supporting this cause for discipline are described in paragraph 18 above.

19 **PRAYER**

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

- 22 1. Revoking or suspending Pharmacy Technician Registration Number TCH 70130,  
23 issued to Andre Robinson.
- 24 2. Ordering Andre Robinson to pay the Board of Pharmacy the reasonable costs of the  
25 investigation and enforcement of this case, pursuant to Business and Professions Code section  
26 125.3;

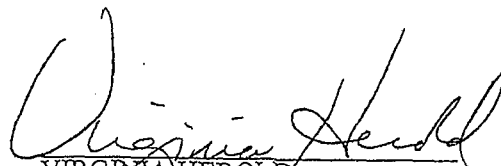
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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/11/10



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

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