

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

In the Matter of the Accusation Against:

BRYAN LEE
510 E. Almond Avenue
Madera, CA 93637

Pharmacy Technician No. TCH 44694

Respondent.

Case No. 3648

OAH No. 2010100341

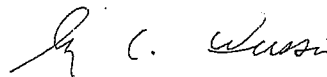
DECISION

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 June 22, 2011.

It is so ORDERED May 23, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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In the Matter of the Accusation Against:

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PROPOSED DECISION

Administrative Law Judge Catherine B. Frink, State of California, Office of Administrative Hearings, heard this matter in Sacramento, California on February 28, 2011.

Geoffrey S. Allen, Deputy Attorney General, represented Virginia Herold (complainant), the Executive Officer of the Board of Pharmacy (board), Department of Consumer Affairs.

Bryan Lee (respondent) appeared without counsel.

Evidence was received and the matter was submitted for decision on February 28, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. The board issued Pharmacy Technician Registration No. TCH 44694 to respondent on August 22, 2003. The registration was in full force and effect at all times relevant herein and will expire on June 30, 2011, unless renewed.

Criminal Conviction

3. On June 27, 2008, in the Madera County Superior Court, State of California, respondent was convicted, upon his plea of no contest, to a violation of Penal Code section

415, subdivision (1), fighting in public, a misdemeanor. Imposition of sentence was suspended, and respondent was placed on bench (informal) probation for three years, subject to terms and conditions. Respondent was ordered to pay court fines totaling \$480 by September 1, 2008, as well as restitution in an amount to be determined by his probation officer. Respondent paid his court fine in full on June 27, 2008. He has not been required to pay restitution. Respondent is in full compliance with the terms of probation, which will terminate on June 27, 2011.

4. The events giving rise to the conviction took place on March 23, 2007. R.A. filled a prescription at the pharmacy where respondent worked as a pharmacy technician, on a date prior to March 23, 2007. R.A. wrote a check for \$26.62 to cover the cost of the prescription. On March 23, 2007, R.A. returned to the pharmacy and informed respondent that MediCal would cover the cost of the prescription. Respondent gave R.A. \$26.62 in cash, and R.A. left the pharmacy. That same day, respondent was informed by the bank that R.A. had written the check on a closed account, and the check was returned for insufficient funds. Respondent called several doctor's offices and determined that R.A. was at a clinic about a mile from the pharmacy. Respondent went to the clinic, where he confronted R.A. and demanded his money back. They engaged in a loud argument, which was witnessed by other clinic patients. R.A. attempted to hit respondent with her purse, and respondent tried to defend himself; they ended up struggling with the purse, and it appeared to bystanders that they were "fighting over the purse," with respondent shouting, "Give me my money, give me the money." Respondent left the clinic without obtaining any money from R.A.

5. Respondent's conviction was substantially related to the qualifications, functions, and duties of a licensed pharmacy technician, in that it arose in the context of a transaction with a customer/patient of the pharmacy, and related to payment for a prescription. It thus had a direct bearing on respondent's fitness to perform duties connected to his licensed activity.

Respondent's Evidence

6. Respondent has been employed as a pharmacy technician at Almond Pharmacy in Madera since he obtained his registration on August 22, 2003. Almond Pharmacy is a family-run business, where respondent's mother works as the licensed pharmacist. Respondent has been employed at the pharmacy full-time since 1996. He worked as the office manager before obtaining his pharmacy technician registration.

7. Respondent served in the military for eight years, and was honorably discharged. He was on active duty from 1994 to 1996, and was in the reserves from 1996 to 2002. Respondent obtained a Bachelor of Science degree from Fresno State University, with a major in Biology and a minor in Chemistry. He participated in the Madera County Search and Rescue Team from 2000 to 2008. He hopes to become a licensed pharmacist some day.

8. Respondent was not required to attend an anger management course as part of his criminal probation. Respondent suffers from depression, for which he is prescribed

Lexapro. Respondent is under the care of a psychiatrist. After the incident took place that led to respondent's conviction, he discussed the circumstances with his psychiatrist, who thereafter increased the dosage of respondent's medication. Respondent realizes that his anger was unwarranted under the circumstances, and that he should have allowed R.A. to keep the money rather than attempting to retrieve the cash. He has changed his business practices after this incident, by becoming "a lot more strict about accepting checks," and by "keep[ing] all business inside the pharmacy location." He expressed remorse for his conduct and has taken responsibility for his actions. It appears that this was an isolated incident which is unlikely to reoccur.

Costs

9. The Accusation herein contains a request for costs of investigation and enforcement of this matter pursuant to Business and Professions Code section 125.3. As set forth in timekeeping records maintained by the Office of the Attorney General, the evidence established that Deputy Attorney General Geoffrey S. Allen expended 10 hours in the prosecution of this matter prior to the date of hearing, including conducting an initial case evaluation; drafting pleadings and other case-related documents; and preparing for hearing. Supervising Deputy Attorney General Arthur D. Taggart expended .25 hours in review and case management of this matter. At an hourly billing rate of \$170, the established costs of the investigation and enforcement of this matter up to the date of hearing is \$1,742.50. The time spent appears to be reasonable and the activities necessary to the development and presentation of the case.

10. The declaration submitted by Mr. Allen in support of requested costs further stated:

In addition to the time set forth above, it is my good faith estimate that the following additional hours were or will be incurred and billed to the Board of Pharmacy for the further preparation of the case up to the commencement of the hearing:

<u>Employee/ Position</u>	<u>Fiscal Year</u>	<u>No. of Hours</u>	<u>Hourly Rate</u>	<u>Total Charges</u>
Geoffrey Allen/ Deputy Attorney General	2010-2011	2.00	\$170.00	\$340.00

11. Respondent testified that he has the ability to pay costs if he is permitted to retain his license.

LEGAL CONCLUSIONS

Cause for Disciplinary Action

1. Business and Professions Code section 4301 states in pertinent part as follows:

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.

[¶] . . . [¶]

(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.

2. California Code of Regulations, title 16, section 1770, states that, “[f]or 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.”

3. Clear and convincing evidence established cause for discipline of respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (1), by reason of Findings 3, 4, and 5, in that respondent was convicted of a crime substantially related to the qualifications, functions, and duties of a pharmacy technician.

4. As set forth in Finding 4, respondent committed an “act involving moral turpitude” within the meaning of Business and Professions Code section 4301, subdivision (f).¹ In the case of *Golde v. Fox* (1979) 98 Cal.App.3d 167, 181, the court stated that, “‘moral turpitude’ is an elusive concept incapable of precise general definition.” In the case of *In re Stuart K. Lesansky* (2001) 25 Cal.4th 11, the California Supreme Court found that criminal conduct reveals moral turpitude if it shows a deficiency in any character trait necessary for the practice of a profession (such as trustworthiness, honesty, fairness, candor, and fidelity to fiduciary duties) or it involves a serious breach of a duty owed to another or society, or such a flagrant disrespect for the law or for societal norms, that knowledge of the conduct would likely undermine the public confidence in and respect for the profession. (*Id.* at p. 16.) In this case, public fighting with a pharmacy client is conduct which would subject the client to potential harm, thus constituting a breach of a duty owed to another. Furthermore, knowledge of the conduct would likely undermine the public’s confidence in and respect for the profession. Therefore, cause for discipline of respondent’s pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (f), was established by clear and convincing evidence.

Rehabilitation

5. California Code of Regulations, title 16, section 1769, subdivision (b) 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

¹ Respondent had a good-faith belief that he was entitled to money wrongfully obtained by R.A.; therefore, his conduct was not dishonest, fraudulent, or deceitful, within the meaning of Business and Professions Code section 4301, subdivision (f).

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.

6. California Code of Regulations, title 16, section 1760, states:

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

7. The board's Disciplinary Guidelines list the following factors to be considered in determining penalties:

Section 4300 of the Business and Professions Code provides that the board may discipline the holder of, and suspend or revoke, any certificate, license or permit issued by the board.

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

1. actual or potential harm to the public
2. actual or potential harm to any consumer

3. prior disciplinary record, including level of compliance with disciplinary order(s)
4. prior warning(s), including but not limited to citation(s) and fine(s), letter(s) of admonishment, and/or correction notice(s)
5. number and/or variety of current violations
6. nature and severity of the act(s), offense(s) or crime(s) under consideration
7. aggravating evidence
8. mitigating evidence
9. rehabilitation evidence
10. compliance with terms of any criminal sentence, parole, or probation
11. overall criminal record
12. if applicable, evidence of proceedings for case being set aside and dismissed pursuant to Section 1203.4 of the Penal Code
13. time passed since the act(s) or offense(s)
14. whether the conduct was intentional or negligent, demonstrated incompetence, or, if the respondent is being held to account for conduct committed by another, the respondent had knowledge of or knowingly participated in such conduct
15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

8. Applying the board's rehabilitation criteria in this matter, it has been almost four years since the events giving rise to the conviction took place. There was potential for harm to a consumer as a result of respondent's conduct. Respondent has not been the subject of any prior disciplinary actions or warnings from the board. The violation resulted from a

single act of misconduct. The crime and/or acts involved the threat of physical violence. Respondent's conduct was out of proportion to the provocation (i.e., retrieval of \$26.62). He has not sought early termination of probation, or expungement of the conviction pursuant to Penal Code section 1203.4. Respondent's conduct was intentional, and was pursued to achieve a financial benefit for his family business, however small.

9. In mitigation, respondent established that he had cause to believe R.A. had defrauded him. Respondent has no other criminal record, and he is in compliance with the terms of his probation. As set forth in Finding 8, respondent has taken responsibility for his actions, which was a single incident, and unlikely to reoccur.

10. Under all of the circumstances herein, the evidence established that respondent can retain his registration as a pharmacy technician at this time without harm to the public, with appropriate terms and conditions of probation.

11. Although respondent indicated in his hearing testimony that he had discussed the incident leading to his conviction with his psychiatrist, it was not clear from the evidence whether respondent's depression was a factor in his conduct, either as a factor in aggravation or in mitigation. Therefore, respondent shall be required to undergo a mental health examination as a condition of probation.

Costs

12. Business and Professions Code section 125.3 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. Business and Professions Code section 125.3, subdivision (c), states:

(c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.

13. As set forth in Finding 9, the established reasonable costs of investigation and enforcement claimed by complainant herein are in the amount of \$1,742.50. The additional costs requested by complainant pertain to "a good faith estimate" that two "additional hours were or will be incurred and billed to the Board of Pharmacy for the further preparation of the case up to the commencement of the hearing." (Finding 10). These "costs" reflect an estimate of time (i.e., costs expected to be incurred) rather than an estimate of costs actually incurred. As an estimate of costs expected to be incurred, the certification as to those two

additional hours fails to satisfy the requirements of Business and Professions Code section 125.3.

14. *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, identifies the factors to be considered in determining the reasonableness of costs pursuant to statutory provisions like Business and Professions Code section 125.3. The factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced; the licensee's subjective good faith belief in the merits of his or her position; whether the licensee has raised a colorable challenge to the proposed discipline; the financial ability of the licensee to pay; and whether the scope of the investigation was appropriate to the alleged misconduct. In this case, all of the allegations were sustained. As set forth in Finding 11, respondent has the ability to pay costs if allowed to retain his license.

15. Under all of the facts and circumstances, and considering the board's obligation to protect the public through licensing actions such as this one, assessment of costs in the amount of \$1,742.50 against respondent is reasonable and appropriate.

ORDER

Pharmacy Technician Registration No. TCH 44694 issued to respondent Bryan Lee is REVOKED pursuant to Legal Conclusions 3 and 4; however the revocation is stayed and respondent is placed on probation for three (3) years upon the following terms and conditions:

1. **Mental Health Examination**

Within thirty (30) days of the effective date of this decision, and on a periodic basis as may be required by the board or its designee, respondent shall undergo, at his own expense, psychiatric evaluation(s) by a board-appointed or board-approved licensed mental health practitioner. The approved evaluator shall be provided with a copy of the board's accusation and decision. Respondent shall sign a release authorizing the evaluator to furnish the board with a current diagnosis and a written report regarding the respondent's judgment and ability to function independently as a pharmacy technician with safety to the public. Respondent shall comply with all the recommendations of the evaluator if directed by the board or its designee.

If the evaluator recommends, and the board or its designee directs, respondent shall undergo psychotherapy. Within thirty (30) days of notification by the board that a recommendation for psychotherapy has been accepted, respondent shall submit to the board or its designee, for prior approval, the name and qualification of a licensed mental health practitioner of respondent's choice. Within thirty (30) days of approval thereof by the board, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved licensed mental health practitioner. Should respondent, for any reason, cease treatment with the approved licensed mental health practitioner, respondent shall notify

the board immediately and, within thirty (30) days of ceasing treatment therewith, submit the name of a replacement licensed mental health practitioner of respondent's choice to the board for its prior approval. Within thirty (30) days of approval thereof, respondent shall submit documentation to the board demonstrating the commencement of psychotherapy with the approved replacement. Failure to comply with any requirement or deadline stated by this paragraph shall be considered a violation of probation.

Upon approval of the initial or any subsequent licensed mental health practitioner, respondent shall undergo and continue treatment with that therapist, at respondent's own expense, until the therapist recommends in writing to the board, and the board or its designee agrees by way of a written notification to respondent, that no further psychotherapy is necessary. Upon receipt of such recommendation from the treating therapist, and before determining whether to accept or reject said recommendation, the board or its designee may require respondent to undergo, at respondent's expense, a mental health evaluation by a separate board-appointed or board-approved evaluator. If the approved evaluator recommends that respondent continue psychotherapy, the board or its designee may require respondent to continue psychotherapy.

Psychotherapy shall be at least once a week unless otherwise approved by the board. Respondent shall provide the therapist with a copy of the board's accusation and decision no later than the first therapy session. Respondent shall take all necessary steps to ensure that the treating therapist submits written quarterly reports to the board concerning respondent's fitness to work as a pharmacy technician, progress in treatment, and other such information as may be required by the board or its designee.

If at any time the approved evaluator or therapist determines that respondent is unable to work safely or independently as a pharmacy technician, the licensed mental health practitioner shall notify the board immediately by telephone and follow up by written letter within three (3) working days. Upon notification from the board or its designee of this determination, respondent shall be automatically suspended and shall not resume work as a pharmacy technician until notified by the board that work may be resumed.

Commencing on the effective date of this decision, respondent shall not work as a pharmacy technician until notified in writing by the board that respondent has been deemed psychologically fit to practice safely, and the board or its designee approves said recommendation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and

devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

2. Compliance with Criminal Probation

Respondent shall fully comply with all of the conditions of probation in Case No. MCR030218 *In the Matter of the People of the State of California v. Bryan Lee*, Madera County Superior Court. Any violation of respondent's criminal probation shall be deemed a violation of probation in this licensing matter.

3. Certification Prior to Resuming Work

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation.

During suspension, respondent shall not enter any pharmacy area or any portion of any other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the board in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

Failure to comply with this suspension shall be considered a violation of probation.

4. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- a conviction of any crime
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician registration or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

5. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

6. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

7. Cooperate with Board Staff

Respondent shall cooperate with the board's inspection program and with the board's monitoring and investigation of respondent's compliance with the terms and conditions of his or her probation. Failure to cooperate shall be considered a violation of probation.

8. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 3648 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 3648 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 3648 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 3648 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

9. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$1,742.50. Respondent shall make said payments according to a schedule as directed by the board or its designee. There shall be no deviation from this schedule absent prior written approval by the board or

its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the board its costs of investigation and prosecution.

10. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the board each and every year of probation. Such costs shall be payable to the board on a schedule as directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

11. Status of Registration

Respondent shall, at all times while on probation, maintain an active, current pharmacy technician registration with the board, including any period during which suspension or probation is tolled. Failure to maintain an active, current registration shall be considered a violation of probation.

If respondent's pharmacy technician registration expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's registration shall be subject to all terms and conditions of this probation not previously satisfied.

12. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his pharmacy technician registration to the board for surrender. The board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the registration, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the board.

Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician registration to the board within ten (10) days of notification by the board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the board.

13. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

14. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a minimum of 40 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of 40 hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least 40 hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician for at least 40 hours as a pharmacy technician as defined by Business and Professions Code section 4115.

15. Violation of Probation

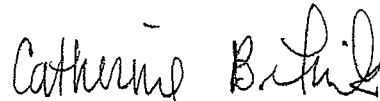
If a respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the registration. If a petition to revoke probation or an accusation is filed against respondent during probation, the board shall have continuing jurisdiction, and the period of probation shall be automatically extended until the petition to revoke probation or accusation is heard and decided.

16. Completion of Probation

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician registration will be fully restored.

Dated: 3/22/11



CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 3648

12 **BRYAN LEE**
13 **510 E. Almond Ave.**
14 **Madera, CA 93637**

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
44694

16 Respondent.

17
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 22, 2003, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 44694 (Pharmacy Technician Registration) to Bryan Lee
24 (Respondent). The Pharmacy Technician Registration was in full force and effect at all times
25 relevant to the charges brought herein and will expire on June 30, 2011, unless renewed.

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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 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.

....

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

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.

....

(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

1 controlled substances or dangerous drugs, to determine if the conviction is of an
2 offense substantially related to the qualifications, functions, and duties of a licensee
3 under this chapter. A plea or verdict of guilty or a conviction following a plea of
4 nolo contendere is deemed to be a conviction within the meaning of this provision.
5 The board may take action when the time for appeal has elapsed, or the judgment of
6 conviction has been affirmed on appeal or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order
8 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
9 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
10 or dismissing the accusation, information, or indictment.

11
12 6. Section 490 of the Code provides, in pertinent part, that a board may suspend or
13 revoke a license on the ground that the licensee has been convicted of a crime substantially
14 related to the qualifications, functions, or duties of the business or profession for which the
15 license was issued.

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

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction)

22 8. Respondent is subject to disciplinary action under Code sections 4301, subd. (I), and
23 490 in that Respondent was convicted of a crime substantially related to the qualifications,
24 functions, or duties of a pharmacy technician. The circumstances are as follows:

25 9. On or about June 27, 2008, in the Superior Court of California, County of Madera, in
26 the case entitled, *People of the State of California v. Bryan Lee* (Super. Ct. Madera County, 2007,
27 Case No. MCR030218), Respondent was convicted on his plea of no contest of violating Penal
28 Code section 415, subd. (1), [fighting], a misdemeanor. The circumstances of the crime are that
on or about March 23, 2007, Respondent and one of his customers, R. A., got into a verbal
argument over the telephone regarding R. A.'s payment for a prescription. Following the
termination of the phone call, Respondent went to R. A.'s place of business and demanded
payment for the prescription. Another argument ensued that resulted in Respondent fighting with

1 R. A. over R. A.'s purse. This crime is substantially related to the functions, qualifications, and
2 duties of a pharmacy technician.

3 SECOND CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

5 10. Respondent is subject to disciplinary action under Code section 4301 in that
6 Respondent committed an act involving moral turpitude, dishonesty, fraud, deceit, or corruption.
7 The circumstances are detailed above in paragraphs 8 and 9.

8 PRAYER

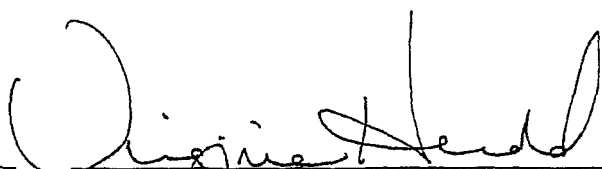
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board of Pharmacy issue a decision:

11 1. Revoking or suspending Pharmacy Technician Registration Number TCH 44694,
12 issued to Bryan Lee.

13 2. Ordering Bryan Lee to pay the Board of Pharmacy the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 125.3;

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

17
18
19 DATED: 5/6/10


20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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