

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

In the Matter of the Accusation Against:

WILDREDO DEOLLAS
5225 14TH Avenue
Sacramento, CA 95820

Pharmacy Technician No. TCH 63786

Respondent.

Case No. 3674

OAH No. 2010080219

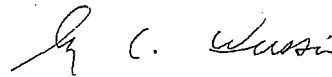
DECISION

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:

WILFREDO DEOLLAS

Sacramento, CA 95820

Original Pharmacy Technician Registration
No. TCH 63786

Respondent.

Case No. 3674

OAH No. 2010080219

PROPOSED DECISION

This matter was heard before Coren D. Wong, Administrative Law Judge, Office of Administrative Hearings, State of California, on February 28, 2011, in Sacramento, California.

Patrick M. Kenady, Deputy Attorney General, represented complainant, Virginia K. Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Terrance G. Kelly, Attorney at Law, represented respondent, Wilfredo Deollas, who was present throughout the hearing.

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

SUMMARY

For the reasons discussed below, cause exists to discipline pharmacy technician license number TCH 63786, issued to respondent Wilfredo Deollas, based on his felony conviction for driving under the influence of alcohol with three prior convictions. Furthermore, it is too soon to determine whether he has been sufficiently rehabilitated to justify allowing him to maintain his license, and the overriding need

to protect the public weighs against allowing him to do so, even on a probationary basis.

FACTUAL FINDINGS

1. The Board issued Original Pharmacy Technician Registration Number TCH 63786 to Wilfredo Deollas on April 17, 2006. Respondent's license has been active at all times relevant herein and will expire on July 31, 2011, unless renewed or revoked.

2. Complainant filed an accusation in her official capacity on May 20, 2010, seeking to revoke or suspend respondent's license based on his criminal conviction described in Factual Finding 4.

3. Respondent timely filed a Notice of Defense to the Accusation pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to Government Code section 11500 et seq.

Respondent's Criminal Conviction

4. On November 20, 2008, respondent was convicted of violating Vehicle Code section 23152, subdivision (a), in the Superior Court of the State of California, County of Sacramento, Case Number 08F06965. Additionally, the allegations that he had been convicted of violating Vehicle Code section 23152, subdivision (b), on June 11, 2000, January 16, 2001, and February 9, 2003, were found to be true, thereby making his 2008 conviction a felony. Imposition of judgment and sentence was suspended, and respondent was placed on formal probation for five years from the date of conviction. Respondent was required to serve 240 days in the Sacramento County Jail¹ and pay fines, penalties, assessments, and restitution. His driving privilege was revoked for four years. He was ordered to attend an 18-month alcohol treatment program as a condition to obtaining a restricted driver's license.

5. The factual basis for respondent's conviction arose out of a traffic stop by a California Highway Patrol officer on July 1, 2008. The officer was on routine patrol on eastbound I-80 at approximately 2:30 a.m. when he saw respondent driving at a high rate of speed. The officer positioned his car behind respondent's and conducted a "bumper pace" for approximately two miles. During that time,

¹Respondent was allowed to serve his jail sentence through home detention. He was required to wear an ankle bracelet and was allowed to leave home only to go to work and, on a once-a-week basis, to do laundry and take his court-ordered drug and alcohol tests.

respondent's speed varied between 80 and 100 miles per hour in an area with a posted maximum speed limit of 65 miles per hour. The officer activated his emergency lights and siren to conduct an enforcement stop. Respondent began to yield to the right, but the officer advised him to take the next exit. However, respondent traveled past that exit and then came to an abrupt stop on the right-hand shoulder.

The officer approached respondent's vehicle and asked for respondent's driver's license. Respondent replied that he did not have his driver's license with him and verbally identified himself and provided his date of birth. The officer noticed that respondent's eyes were red and watery, his speech was slow, and he smelled of alcohol. The officer asked respondent if he had been drinking, and respondent admitted to having drunk six beers between 4 p.m. and 8 p.m. the previous evening. The officer explained and demonstrated several field sobriety tests (FST's), which respondent then performed but failed. Based on respondent's admissions, objective symptoms of intoxication, and failure to pass the FST's, he was arrested for driving under the influence and transported to the Sacramento County Jail. Respondent provided a blood sample, and the results revealed a blood-alcohol content of .17 percent.

Factors in Aggravation, Mitigation, and Rehabilitation

6. Respondent is 30 years old. He stipulated that the allegations in the Accusation are true and testified candidly about his four drunk driving convictions. He explained that the impetus of his most recent conviction was a telephone call he received from his then-girlfriend the night of June 30, 2008. She told him that she was pregnant but the baby might not be his. Respondent became sad and depressed over this news and began drinking hard liquor with soda at 4 p.m. and continued for the next four hours. At some point later that night or early the next morning, he asked his then-girlfriend if he could come to her house, and she agreed. He was arrested on his way to her house.

7. Respondent has not consumed any alcohol since the night of June 30, 2008. He was released after spending the night in jail and attended his first Alcoholics Anonymous ("AA") meeting later that day. He attended AA meetings on a daily basis until he began home detention in January 2009, sometimes attending two or three in one day. After completing home detention in July 2009, respondent attended AA meetings once every couple of months. His last meeting was in December 2010.

8. Respondent enrolled in an 18-month alcohol treatment program as one of the terms and conditions of his probation. Completion of the first 12 months of the program was a prerequisite to his obtaining a restricted driver's license, which he received on September 28, 2010. He has one more meeting before he completes the program. He still owes \$4,900 in restitution.

9. Respondent has been a full time student at Sacramento City College since the Fall of 2009. He has completed a total of 48 semester units, has a cumulative grade point average of 3.125, and made the President's Honor Roll for Academic Achievement in the Fall of 2009 (Highest Honors) and the Fall of 2010 (Honors).

10. Respondent submitted six letters of recommendation which were received in evidence as administrative hearsay pursuant to Government Code section 11513, subdivision (d). Three of the letters are dated within one week of the hearing, while the others are undated. None of them acknowledge any awareness of respondent's eight-year criminal history of abusing alcohol. Nor do any provide any credible evidence that would support a conclusion that respondent's past criminal conduct will not re-occur. Therefore, they are given little weight.

11. The Board has adopted guidelines which are to be considered when deciding what form of discipline should be imposed. (Cal. Code Regs., tit. 16, § 1760.) When discipline is sought based on a criminal conviction, the Board must consider: 1) the nature and severity of the crime(s); 2) the licentiate's total criminal record; 3) the lapse of time since the commission of the offense(s); 4) whether the licentiate has complied with all of the terms of any probation imposed; and 5) any evidence of rehabilitation. (Cal. Code Regs., tit. 16, § 1769.)

12. As set forth in Factual Findings 4-6, respondent has an extensive criminal history of abusing alcohol which began in June 2000 and did not end until November 2008. His most recent conviction arose out of an incident where he was driving between 80 and 100 miles per hour in a 65 miles per hour zone. (Factual Finding 5.) He will be on formal criminal probation through November 2013, has not completed his 18-month alcohol treatment program, and still owes \$4,900 in restitution. (Factual Findings 4 and 8.)

It is laudable that respondent stopped drinking alcohol after his last arrest and began attending AA meetings the day he was released from jail. He also is to be commended for enrolling at Sacramento City College as a full time student and for the academic successes he has achieved thus far. But he has attended meetings only sporadically since July 2009 and stopped all together after December 2010. (Factual Finding 7.) He has participated in no alcohol treatment programs other than that which was ordered by probation and which was a prerequisite to his obtaining a restricted license. (Factual Finding 8.)²

²See, Vehicle Code section 13352, subdivision (a)(7) [criteria for applying for restricted license after driving privilege has been revoked].

In short, respondent has not demonstrated his commitment to sobriety. Nor has he offered any evidence of any support network or any other mechanism he has in place to assist him with handling any future desires to drink alcohol when faced with the stressors of life. More time is needed to evaluate his rehabilitation in light of the absence of such evidence, his long criminal relationship with alcohol abuse, and his continued criminal probation. (See, *In re Gossage* (2000) 23 Cal.4th 1080, 1099 [little weight is given to person's good behavior while on probation or parole or compliance with terms of such probation or parole because such conduct is expected].) The need to protect the public weighs against allowing respondent to keep his license, even on a probationary basis. (Bus. & Prof. Code, § 4313 [board must consider evidence of rehabilitation when imposing discipline, but public protection takes precedence when there is a conflict between the two].)

Costs of Enforcement

13. Complainant requested costs of investigation and enforcement in the total amount of \$977.50 pursuant to Business and Professions Code section 125.3. A Certification of Prosecution Costs: Declaration of Patrick M. Kenady was submitted in support of the request. Attached to the Declaration is a printout of a Cost of Suit Summary and Matter Time Activity by Professional Type, which describes tasks performed by the Office of the Attorney General in the amount of \$977.50. The Attorney General already billed this amount to the Board.

At the hearing, respondent objected to awarding any costs. He currently lives with his father, is unemployed, and has no source of income since he recently received his last check for unemployment benefits. He has reapplied for unemployment benefits and is waiting to see if his application is approved. He is also waiting to hear the results of a recent job interview. He has a \$19,000 student loan and owes \$4,900 in restitution to the State of California.

The costs that Complainant seeks are reasonable in light of the issues involved in this matter as discussed in Legal Conclusion 4 below.

LEGAL CONCLUSIONS

Cause of Discipline

1. Business and Professions Code section 4301 requires the Board to impose discipline when a licentiate engages in unprofessional conduct. Methods of discipline include: 1) suspending judgment; 2) placing the license on probation; 3) suspending the license; 4) revoking the license; or 5) any other act of discipline the Board in its discretion deems proper. (Bus. & Prof. Code, § 4301, subd. (b).) "Unprofessional conduct" includes: "[t]he . . . use . . . 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” (Bus. & Prof. Code, § 4301, subd. (h).)

Respondent’s felony conviction for driving under the influence with three prior convictions (Factual Findings 4-6) constitutes cause to discipline his license pursuant to Business and Professions Code section 4301, subdivision (h).³ There is no doubt that the act of drunk driving is dangerous to the driver, others, and the public. (See, *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770 [“Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy.”].)

2. “Unprofessional conduct” also includes being convicted of “any felony involving the use, consumption, or self-administration of any . . . alcoholic beverage” (Bus. & Prof. Code, § 4301, subd. (k).) Therefore, respondent’s drunk driving conviction constitutes cause to discipline his license also pursuant to Business and Professions Code section 4301, subdivision (k). (Factual Findings 4-6.)

3. Business and Professions Code section 4301, subdivision (l), defines “unprofessional conduct” as “[t]he conviction of a crime substantially related to the qualifications, functions, and duties of a license under this chapter. . . .” A crime is “substantially related” to the qualifications, functions, and duties of a pharmacy technician “if to a substantial degree the crime 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.” (Cal. Code Regs., tit. 16, § 1770.)

Respondent’s drunk driving conviction is “substantially related” to the qualifications, functions, and duties of a pharmacy technician in that the underlying acts demonstrate that he lacks respect for, and is unwilling or unable to comply with, laws designed for the protection of the public, such as those which regulate the functions and duties of a pharmacy technician. Furthermore, his acts reflect poorly on his common sense and professional judgment, qualities essential to his profession, and tends to undermine public confidence in and respect for such profession. (See, *Griffith v. Superior Court, supra*, 96 Cal.App.4th 757, 770-771 [analyzing factors

³See, Evidence Code section 452.5, subdivision (b) [a certified copy of an official record of conviction is admissible to prove “the commission, attempted commission, or solicitation of a criminal offense, prior conviction, service of prison term, or other act, condition, or event recorded by the record”]; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1460-1461 [Evid. Code, § 452.5, subd. (b) creates a hearsay exception which allows for admission of qualified court record to not only prove fact of conviction but also that offense reflected in record actually occurred].

used to determine whether a crime is substantially related to the qualifications, functions, and duties of particular profession].) Therefore, cause exists to discipline respondent's license pursuant to Business and Professions Code section 4301, subdivision (1). (Factual Findings 4-6.)

Cost Recovery

4. Pursuant to Business and Professions Code section 125.3, a licentiate found to have violated the licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include: 1) the licentiate's success in getting the charges dismissed or reduced; 2) the licentiate's subjective good faith belief in the merits of his position; 3) whether the licentiate raised a colorable challenge to the proposed discipline; 4) the licentiate's financial ability to pay; and 5) whether the scope of the investigation was appropriate in light of the alleged misconduct. (*Id.*, at p. 45.)

Here, respondent stipulated to the truth of the allegations in the Accusation. (Factual Finding 6.) His evidence focused entirely on his purported rehabilitation. But his evidence is weak. On the other hand, complainant's request for \$977.50 in costs is reasonable in light of the facts of this matter. Therefore, the requested amount of costs is found to be reasonable. In light of respondent's current financial condition as described in Factual Finding 13, these costs shall not be due and payable unless and until he decides to seek reinstatement of his license as set forth below.


ORDER

1. Pharmacy technician license number TCH 63786, issued to respondent Wilfredo Deollas, is revoked. Respondent shall relinquish his technician license to the Board within ten (10) days of the effective date of this decision. Respondent may not reapply or petition the Board for reinstatement of his revoked technician license for three (3) years from the effective date of this decision.

2. A condition of any reinstatement of respondent's revoked technician license shall be that he is certified as defined in Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board.

3. As a condition precedent to any reinstatement of his revoked technician license, respondent shall reimburse the Board for its costs of investigation and prosecution in the amount of \$977.50. Said amount shall be paid in full prior to the reinstatement of his revoked technician license, unless otherwise ordered by the Board.

DATED: March 10, 2011


COREN D. WONG
Administrative Law Judge
Office of Administrative Hearings

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

10
11 In the Matter of the Accusation Against:

Case No. 3674

12 **WILFREDO DEOLLAS**
5225 14th Avenue
13 Sacramento, Ca. 95820
Original Pharmacy Technician Registration
14 No. TCH 63786

A C C U S A T I O N

15 Respondent.

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 2. On or about April 17, 2006, the Board of Pharmacy issued Original Pharmacy
22 Technician Registration Number TCH 63786 to Wilfredo Deollas (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 July 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. Section 4300 of the Code states:

2 "(a) Every license issued may be suspended or revoked.

3 ...

4 5. Section 4301 of the Code states:

5 "The board shall take action against any holder of a license who is guilty of unprofessional
6 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

7 Unprofessional conduct shall include, but is not limited to, any of the following:

8 ...

9 "(h) The administering to oneself, of any controlled substance, or the use of any dangerous
10 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
11 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
12 to the extent that the use impairs the ability of the person to conduct with safety to the public the
13 practice authorized by the license.

14 ...

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

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

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

7 ...

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

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

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

19 8. Section 118, subdivision (b), of the Code provides that the
20 suspension/expiration/surrender/cancellation of a license shall not deprive the Board of
21 jurisdiction to proceed with a disciplinary action during the period within which the license may
22 be renewed, restored, reissued or reinstated.

23 FIRST CAUSE FOR DISCIPLINE

24 (CRIMINAL CONVICTION)

25 9. Respondent is subject to disciplinary action under section 4300(k) (l) in that on or
26 about October 23, 2008 in a criminal proceeding entitled People v. Wilfredo Edward Deollas,
27 Case No. 08F06965 in Sacramento County Superior Court respondent was convicted by a plea of
28 nolo contendere to a violation of Vehicle Code 23152(A) (Driving Under the Influence), a

1 felony, with three prior convictions for driving under the influence, which is substantially related
2 to the qualifications, functions, or duties as a pharmacy technician. The circumstances are as
3 follows; respondent on July 1, 2008 was driving a vehicle with a concentration of alcohol in his
4 blood of 0.15 percent or more by weight.

5 SECOND CAUSE FOR DISCIPLINE

6 (USE OF ALCOHOLIC BEVERAGE)

7 10. Respondent is subject to disciplinary action under section 4301(h) in that respondent
8 used an alcoholic beverage to the extent or in a manner as to be dangerous or injurious to oneself,
9 to a person holding a license under this chapter, or to any other person or to the public, or to the
10 extent that the use impairs the ability of the person to conduct with safety to the public the
11 practice authorized by this license as described in paragraph 9 above.

12 PRAYER

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

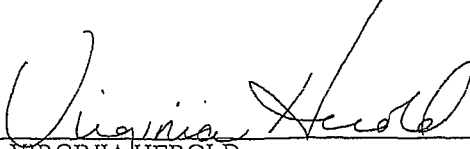
- 15 1. Revoking or suspending Original Pharmacy Technician Registration Number TCH
16 63786, issued to Wilfredo Deollas.
- 17 2. Ordering Wilfredo Deollas to pay the Board of Pharmacy the reasonable costs of the
18 investigation and enforcement of this case, pursuant to Business and Professions Code section
19 125.3;
- 20 3. Taking such other and further action as deemed necessary and proper.

21 ///

22 ///

23 ///

24 DATED: 5/20/10


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

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