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

In the Matter of the Petition to Revoke Probation Against: **ANDREW ALBERT ASARO** **10108 Calle Marinero, #36** **Spring Valley, CA 91977** **Pharmacy Technician Registration No. TCH 56928** Respondent.	Case No. 3800 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 17, 2010, Complainant Virginia Herold, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Petition to Revoke Probation No. 3800 against Andrew Albert Asaro (Respondent) before the Board of Pharmacy. (Petition to Revoke Probation attached as Exhibit A.)

2. On or about June 21, 2004, the Board of Pharmacy (Board) issued Pharmacy Technician Registration No. TCH 56928 to Respondent. The Pharmacy Technician Registration expired on May 2, 2007, and has not been renewed.

3. On or about December 31, 2010, Respondent was served by certified and first class mail copies of the Petition to Revoke Probation No. 3800, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to Business and

Professions Code sections 136 and 4100, and California Code of Regulations, title 16, section 1704, is required to be reported and maintained with the Board, which was and is:

10108 Calle Marinero, #36
Spring Valley, CA 91977

4. Service of the Petition to Revoke Probation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. On or about January 7, 2011, the aforementioned documents served by certified mail were returned by the U.S. Postal Service marked "Moved Left No Address - Unable to Forward - Return to Sender." On or about January 12, 2011, the aforementioned documents served by first class mail were returned by the U.S. Postal Service marked "Moved Left No Address - Unable to Forward - Return to Sender."

6. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Petition to Revoke Probation, and therefore waived his right to a hearing on the merits of Petition to Revoke Probation No. 3800.

8. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Investigatory Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Petition to Revoke

Probation No. 3800, finds that the charges and allegations in Petition to Revoke Probation No. 3800, are separately and severally true and correct by clear and convincing evidence.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Andrew Albert Asaro has subjected his Pharmacy Technician Registration No. TCH 56928 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Petition to Revoke Probation which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case:

a. Probation Condition A: Respondent's probation is subject to revocation because he failed to provide proof of certification by the Pharmacy Technician Certification Board (PTCB).

b. Probation Condition C: Respondent's probation is subject to revocation because he failed to provide any quarterly reports to the Board since the start of his probation.

c. Probation Condition D: Respondent's probation is subject to revocation because he failed to appear as requested for probation office conferences scheduled for May 10, 2007, and July 5, 2007, and he did not provide prior notification to the Board that he would not be able to attend the meetings.

d. Probation Condition G: Respondent's probation is subject to revocation because he failed to make any payments towards the $2,548.50 cost recovery.

e. Probation Condition I: Respondent's probation is subject to revocation because he failed to renew his pharmacy technician registration as required and allowed it to expire on February 29, 2008.

f. Probation Condition J: Respondent's probation is subject to revocation because he failed to notify the Board in writing within 10 days of a change in name, mailing address or phone number. All correspondence sent to Respondent's address of record with the Board has been returned and undeliverable.

g. Probation Condition K: Respondent's probation is subject to revocation because he failed to maintain legal employment as a pharmacy technician at any time during his probation period.

h. Probation Condition M: Respondent's probation is subject to revocation because he failed to submit any documentation or proof of attendance in any substance abuse recovery support group.

i. Probation Condition N: Respondent's probation is subject to revocation because he failed enroll in a Board-appointed random drug testing program and, therefore, he never submitted to any drug test.

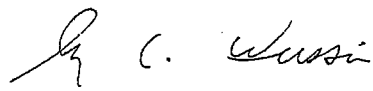
ORDER

IT IS SO ORDERED that Pharmacy Technician Registration No. TCH 56928, heretofore issued to Respondent Andrew Albert Asaro, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on May 11, 2011.

It is so ORDERED April 11, 2011.



STANLEY C. WEISSER, BOARD PRESIDENT
FOR THE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS

DOJ Matter ID: SD2010702495

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Attachment:
Exhibit A: Petition to Revoke Probation

Exhibit A

Petition to Revoke Probation

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Attorneys for Complainant

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

In the Matter of the Petition to Revoke Probation Against, **ANDREW ALBERT ASARO** **10108 Calle Marinero, #36** **Spring Valley, CA 91977** **Pharmacy Technician Registration No. TCH 56928** Respondent.	Case No. 3800 OAH No. L2006070473 PETITION TO REVOKE PROBATION

Complainant alleges:

PARTIES

1. Virginia Herold (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about June 21, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 56928 to Andrew Albert Asaro (Respondent). The Pharmacy Technician Registration expired on February 29, 2008, and was not renewed. The Board suspended said registration on May 2, 2007.

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JURISDICTION

3. This Petition to Revoke Probation 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 (Code) unless otherwise indicated.

4. Section 4300, subdivision (a) of the Code provides that every license issued by the Board may be suspended or revoked.

5. Following an administrative hearing in the disciplinary action entitled "*In the Matter of the Accusation Against Andrew Albert Asaro*," Office of Administrative Hearings (OAH) case number L2006070473, the administrative law judge issued a proposed decision, which was adopted by the Board and became effective May 2, 2007, in which Respondent's Pharmacy Technician Registration was revoked. However, the revocation was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

FIRST CAUSE TO REVOKE PROBATION

(Failure to Obtain Certification by the Pharmacy Technician Certification Board)

6. At all times after the effective date of Respondent's probation, Condition A stated:

> Respondent shall be suspended from working as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

7. Respondent's probation is subject to revocation because he failed to comply with Probation Condition A, referenced above, in that Respondent did not provide proof of PTCB certification to the Board.

SECOND CAUSE TO REVOKE PROBATION

(Failure to Report Quarterly to the Board)

8. At all times after the effective date of Respondent's probation, Condition C stated:

> Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

9. Respondent's probation is subject to revocation because he failed to comply with Probation Condition C, referenced above, in that Respondent has not provided any quarterly reports to the Board since the start of probation.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Appear for Interviews With the Board Upon Request)

10. At all times after the effective date of Respondent's probation, Condition D stated:

> Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at the location determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

11. Respondent's probation is subject to revocation because he failed to comply with Probation Condition D, referenced above, in that Respondent did not appear as requested for probation office conferences scheduled for May 10, 2007, and July 5, 2007, nor did he provide prior notification to the Board that he would not be able to attend the meetings.

FOURTH CAUSE TO REVOKE PROBATION

(Failure to Submit Cost Recovery Payments)

12. At all times after the effective date of Respondent's probation, Condition G stated:

> Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $2,548.50. Respondent shall make said payments at the rate of $75.00 per month, unless modified by the Board.
>
> If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by Respondent shall not relieve him of the responsibility to reimburse the Board its costs of investigation and prosecution.

13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition G, referenced above, in that Respondent failed to make any cost recovery payments to the Board.

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FIFTH CAUSE TO REVOKE PROBATION

(Failure to Maintain an Active Pharmacy Technician License)

14. At all times after the effective date of Respondent's probation, Condition I stated:

> At all times, while on probation, Respondent shall maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.
>
> If Respondent's pharmacy technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

15. Respondent's probation is subject to revocation because he failed to comply with Probation Condition I, referenced above, in that Respondent did not renew his pharmacy technician registration as required and allowed it to expire on February 29, 2008.

SIXTH CAUSE TO REVOKE PROBATION

(Failure to Notify the Board of a Change in Mailing Address)

16. At all times after the effective date of Respondent's probation, Condition J stated:

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

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition J, referenced above, in that the Board sent correspondence to Respondent via certified U.S. Mail to his address of record. The correspondence was returned to the Board marked "Attempted – Not Known, Unable to Forward," and "Undeliverable as Addressed, Unable to Forward."

SEVENTH CAUSE TO REVOKE PROBATION

(Failure to Maintain 80 Hours Monthly Employment as a Pharmacy Technician)

18. At all times after the effective date of Respondent's probation, Condition K stated:

> It is a violation of probation for Respondent to work less than 80 hours per month as a pharmacy technician. Regardless of residency, for any reason, should he cease practicing as a pharmacy technician in California, Respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation

period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice as a pharmacy technician as defined in Business and Professions Code section 4028.

19. Respondent's probation is subject to revocation because he failed to comply with Probation Condition K, referenced above, in that Respondent was not legally employed as a pharmacy technician at any time during the probation period.

EIGHTH CAUSE TO REVOKE PROBATION

(Failure to Submit Proof of Attendance in a Substance Abuse Program)

20. At all times after the effective date of Respondent's probation, Condition M stated:

Within 30 days of the effective date of this Decision, Respondent shall attend regularly a board-approved recognized and established substance abuse recovery support group in California (e.g. Alcoholic Anonymous, Cocaine Anonymous, etc.). He must attend at least one group meeting per week. He shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation, unless modified by the Board.

21. Respondent's probation is subject to revocation because he failed to comply with Probation Condition M, referenced above, in that Respondent failed to submit any documentation or proof of attendance in any substance abuse recovery support group.

NINTH CAUSE TO REVOKE PROBATION

(Failure to Submit to Random Drug Testing)

22. At all times after the effective date of Respondent's probation, Condition N stated:

At his own expense, Respondent shall participate in random drug testing, including but not limited to, biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period, and the frequency of testing will be determined by the Board. At all times, Respondent shall cooperate with the Board, and, when directed, shall submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. He may not resume the practice of pharmacy until notified by the Board in writing.

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23. Respondent's probation is subject to revocation because he failed to comply with Probation Condition N, referenced above, in that Respondent failed to enroll in the Board-appointed random drug testing program and, therefore, he has not submitted to any drug test.

PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in OAH Case No. L2006070473 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 56928 issued to Andrew Albert Asaro;

2. Revoking or suspending Pharmacy Technician Registration No. TCH 56928, issued to Andrew Albert Asaro;

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

DATED: 12/17/10

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

SD2010702495

Exhibit A

Decision and Order

Board of Pharmacy Case No. 2908

Office of Administrative Hearings Case No. L2006070473

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

In the Matter of the Accusation Against: ANDREW ALBERT ASARO,TCH 839 Colorado Ave., #B Chula Vista, CA 91911 Pharmacy Technician Registration No. 56928 Respondent.	Case No. 2908 OAH No. L2006070473

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 May 2, 2007.

IT IS SO ORDERED.

Date: April 2, 2007

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By William Powers
WILLIAM POWERS
Board President

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

In the Matter of the Accusation Against: ANDREW ALBERT ASARO,TCH 839 Colorado Ave., #B Chula Vista, CA 91911 Pharmacy Technician Registration No. 56928 Respondent.	Case No. 2908 OAH No. L2006070473

PROPOSED DECISION

Administrative Law Judge Vallera J. Johnson, State of California, Office of Administrative Hearings, heard this matter in San Diego, California on January 4, 2007.

Ronald A. Casino, Deputy Attorney General, represented Patricia F. Harris, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

Respondent was present and represented himself.

The matter was submitted on February 13, 2007.[1]

FACTUAL FINDINGS

1. Patricia F. Harris filed Accusation, dated May 3, 2006, and First Amended Accusation, dated January 24, 2007, case number 2908, against Andrew Albert Asaro (Respondent), in her capacity as the Executive Officer of the Board of Pharmacy (Board).

[1] The record remained open for receipt of additional documentary evidence from both parties. On January 30, 2007, Complainant filed the First Amended Accusation (Exh. 1-A), certified court documents from the Superior Court of the State of California, County of San Diego, in the case entitled *The People of the State of California vs. Andrew Albert Asaro*, case number M99195 (Exh. 6) and Police Report (Exh. 7). Respondent submitted additional documentary evidence on February 2, 2007, to wit: Two letters of support, marked Exhibit A; documentary evidence that Respondent signed up for the Driving Under the Influence Program, marked Exhibit B.

Without objection, Exhibits 1A was admitted for jurisdictional purpose and Exhibits 6, 7, A and B were admitted into evidence. On February 13, 2007, the record was closed, and the matter was submitted.

Respondent filed a Notice of Defense, dated June 3, 2006.

2. On June 21, 2004, the Board issued Pharmacy Technician Registration number 56928 to Respondent. At all times relevant herein, said registration was in full force and effect and will expire on February 28, 2008, unless renewed.

3. On July 20, 2006, in the Superior Court of California, County of San Diego, in the case entitled *The People of the State of California v. Andrew A. Asaro*, case number M99195, on his plea of no contest, Respondent was convicted of violation of Vehicle Code section 23152, subdivision (a), Driving Under the Influence of Alcohol.

4. The facts and circumstances underlying the conviction are that on April 23, 2006, Respondent drove a vehicle while having a BAC of .23.

Despite his admission to the police officer who investigated the accident and in his criminal case that he was the driver of the vehicle, Respondent insists that he was the passenger, not driver of the vehicle; he provided the name of the person that he asserts was the driver and contends that she ran from the scene following the accident but prior to the arrival of the investigating law enforcement officer.

Respondent's testimony is contrary to the evidence in the record, i.e., the police report regarding the incident (Exh. 7) that resulted in his second conviction. There is no mention in the police report of another individual in his vehicle. The investigating officer determined that Respondent was too intoxicated to safely perform any field test. Respondent admitted to this officer that he was talking on his cell phone when he hit the cars. Further, according to the police report, Respondent's BAC was .23. With the exception of his own testimony, Respondent offered no evidence contrary to the facts in the foregoing paragraph.

Given the facts in the foregoing paragraphs, Respondent's testimony that he was not the driver of the vehicle during the incident that resulted in this conviction is disregarded.

5. As a consequence of the conviction, the Court suspended imposition of sentence and placed Respondent on five years summary probation on terms and conditions that included that he:

- serve 96 days in custody; the Court authorized him to serve his time with the work release program;
- complete 20 days in the Public Service Work Program;
- pay fines of $1,750.00;
- pay restitution to the victim in an amount to be determined;
- not drive with a measurable amount of alcohol/drugs in his system;
- submit to any test at the request of a peace officer for detection;

- attend and complete the multiple conviction program (SB38) and participate in any treatment or rehabilitation that may be recommended by the provider; and
- not drive a vehicle without a valid license and valid insurance.

6. Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, by reason of Findings 3, 4 and 5.

7. Respondent has been convicted of an offense that involved the consumption of alcohol beverages to an extent and in a manner dangerous to himself or the public, by reason of Findings 3, 4 and 5. Given the foregoing, his misconduct constitutes unprofessional conduct.

8. On December 17, 2004, in the Superior Court of California, County of San Diego, South County Division, in the case entitled *The People of the State of California v. Andrew A. Asaro*, case number SCS189496, on his plea of guilty, Respondent was convicted of violation of Vehicle Code section 23152, subdivision (b), Driving a Vehicle While Having a Measurable Blood Alcohol of .08 or More.[2]

9. The facts and circumstances surrounding the crime are that on November 19, 2004, Respondent drove a vehicle while having a BAC of .11.

10. As a consequence of the conviction, the Court placed Respondent on five years informal probation and ordered him to:

- serve two days in custody;
- pay a fine of $1,600.00;
- complete the First Conviction Program (3 month class);
- not drive with a measurable amount of alcohol/drugs in his system;
- submit to any test for detection of alcohol/drugs in his system at the request of a peace officer; and
- obey all laws.

11. Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of a pharmacy technician, by reason of Findings 8, 9 and 10.

12. Respondent has been convicted of an offense that involved the consumption of alcohol to an extent and in a manner dangerous to himself or the public, by reason of Findings 8, 9 and 10. Given the foregoing, his misconduct constitutes unprofessional conduct.

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[2] In addition to the conviction set forth in Finding 8, Respondent was convicted of violation of Health and Safety Code section 11350, subdivision (a), Unlawful Possession of Controlled Substances, to wit: heroin. On December 17, 2004, Respondent presented evidence of completion of the Court ordered Diversion Program, and pursuant to Penal Code section 1000, the Court dismissed the foregoing conviction.

13. Respondent has been convicted of more than one misdemeanor involving the use, consumption or self-administration of an alcoholic beverage, by reason of Findings 3, 4, 5, 8, 9 and 10.

14. Respondent provided evidence of explanation and rehabilitation.

- There is no evidence that he has been previously disciplined by the Board or suffered convictions other than those that are the subject of this proceeding.
- He is remorseful for his misconduct and has learned from the experience. He recognizes that alcohol is a poison and hindered his judgment, i.e., to get in a vehicle and drive. He has not had a drink of alcohol since April 23, 2006, the date of the incident that resulted in his most recent conviction. He understands that his father is an alcoholic and that he may have a genetic propensity to be an alcoholic as well.
- He no longer associates with friends that go out drinking.
- He has complied with the terms and conditions of probation in the criminal case, including enrolling in and attending the court ordered DUI Program and Alcoholics Anonymous (AA) meetings.
- He candidly disclosed the second DUI conviction to the Board, who had no information regarding the conviction prior to his disclosure.
- He performs his duties as a pharmacist technician in at least a competent, if not above competent, manner.
- He provided a letters of support from a co-worker and a pharmacist with whom he works. Both indicate that they aware that he has been convicted of DUI and support retention of his license. In addition to supporting his testimony regarding his rehabilitation, they explain that the pharmacy would suffer a loss if Respondent's license is revoked.
- There is no evidence that he has inappropriately taken anything from a pharmacy, that he has been at work with alcohol on his breath or that any patient has been injured or placed in jeopardy because of Respondent's alcohol abuse.
- He is honest, dependable, hardworking and intelligent. He has excellent interpersonal skills.

15. Respondent has been licensed as a pharmacy technician for almost three years. During this time, he has suffered two DUI convictions in less than two years. The first conviction occurred four months after he was licensed by the Board. He remains on criminal probation until July 20, 2011. He has matured and is unlikely to engage in such misconduct in the future.

16. Pursuant to Business and Professions Code section 125.3, Complainant seeks recovery of the costs of investigation and enforcement of the allegations set forth in the Accusation and First Amended Accusation in the amount of $2,548.50. In support of this

request, Complainant submitted "Certification of Costs of Investigative and Prosecution by Agency." Respondent made no objection to Complainant's request for costs on the amount.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (l), for unprofessional conduct, in that he suffered two DUI offenses that are substantially related to the qualifications, functions and duties of a pharmacy technician, by reason of Findings 3, 4, 5, 6, 8, 9, 10 and 11.

2. Cause exists to discipline Respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (h), for unprofessional conduct related to the consumption of an alcoholic beverage to an extent and in a manner dangerous to himself, another person or the public, by reason of Findings 3, 4, 5, 7, 8, 9, 10 and 12.

3. Cause exists to discipline Respondent's pharmacy technician registration under Business and Professions Code section 4301, subdivision (k), in that Respondent has been convicted of multiple misdemeanor offenses that involved the use, consumption or self-administration of an alcoholic beverage, by reason of Findings 3, 4, 5, 8, 9, 10 and 13.

4. Given the facts (Findings 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14), the violations (Legal Conclusions 1, 2 and 3), the Board's criteria for rehabilitation set forth in California Code of Regulations, title 16, section 1769, and the evidence of explanation and rehabilitation (Findings 15 and 16), the question is appropriate discipline.

Administrative proceedings to discipline a professional license are intended to protect the public, not punish the licensee. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763.)

Complainant seeks revocation of Respondent's license arguing that it would be contrary to the public interest to allow him to continue to practice as a pharmacy technician because of his DUI convictions. As a result of his abuse of alcohol, Respondent engaged in repeated misconduct that demonstrated a disregard for the safety of himself and the public. Complainant is concerned about the potential impact of his alcohol abuse on his duties as a pharmacy technician. Respondent established that he appreciates the wrongfulness of his acts, is remorseful, accepts responsibility for his misconduct, and has taken action to attain and maintain sobriety. There is no evidence that his substance abuse problem has had any impact, whatsoever, on patient care. Considering the foregoing, it would not be contrary to the public interest to allow Respondent to practice as a pharmacist technician with a probationary license with appropriate terms and conditions.

5. Complainant seeks recovery of the reasonable costs of investigation and enforcement in the amount of $2,548.50. In determining reasonableness, Business and

Professions Code section 125.3, California Code of Regulations, title 1, section 1042 and the factors set forth in *Robert Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 have been considered.

The *Zuckerman* factors include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, a determination regarding the financial ability of the licensee to pay, and whether the investigation was appropriate to the alleged misconduct.

Complainant established that Respondent committed the violations alleged in the Accusation and First Amended Accusation (Findings 3, 4, 5 6, 7, 8, 9, 10, 11, 12 and 13, and Legal Conclusions 1, 2 and 3). Considering the facts and circumstances underlying the convictions, Complainant seeks revocation of his license.

Respondent provided sufficient evidence to establish his subjective good faith belief in the merits of his position, raised a colorable challenge to Complainant's proposed discipline and that the appropriate discipline is not revocation but a probationary license. In addition, Respondent offered no evidence to establish that it would be a financial burden for him to pay the costs.

Given the foregoing, the reasonable costs of investigation and enforcement are $2,548.50.

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ORDER

Technician registration number TCH 56928 issued to Respondent is revoked; however, revocation is stayed, and Respondent is placed on probation for five years on the terms and conditions set forth below.

A. Respondent shall be suspended from working as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

During suspension, Respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs which is licensed by the Board, or any manufacturer, or 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 he manage, administer, or be a consultant to any licensee of the Board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances.

Subject to the above restrictions, Respondent may continue to own or hold an interest in any entity licensed by the Board in which he holds an interest at the time this Decision becomes effective, unless otherwise specified in this Order.

B. Respondent shall obey all state and federal laws and regulations substantially related to or governing the practice of pharmacy.

C. Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

D. Upon receipt of reasonable notice, Respondent shall appear in person for interviews with the Board upon request at various intervals at the location determined by the Board. Failure to appear for a scheduled interview without prior notification to Board staff shall be considered a violation of probation.

E. Respondent shall cooperate with the Board's inspectional program and in the Board's monitoring and investigation of his compliance with the terms and conditions of probation. Failure to comply shall be considered a violation of probation.

F. Respondent shall notify all present and prospective employers of the Decision in case number 2908, and the terms, conditions and restrictions imposed on Respondent by the Board's Order.

Within 30 days of the effective date of this Decision, and within 15 days of Respondent undertaking new employment, he shall cause his employer to report to the Board, in writing, acknowledging that the employer has read the Decision in case number 2908.

If Respondent works for or is employed by or through a pharmacy employment service, Respondent must notify the pharmacist-in-charge and/or owner at every pharmacy of the terms and conditions of the Decision in case number 2908 in advance of Respondent commencing work at each pharmacy.

"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, whether Respondent is considered an employee or independent contractor.

G. Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $2,548.50. Respondent shall make said payments at the rate of $75.00 per month, unless modified by the Board.

If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by Respondent shall not relieve him of the responsibility to reimburse the Board its costs of investigation and prosecution.

H. Respondent shall pay the costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board at the end of each year of probation. Failure to pay such costs shall be considered a violation of probation.

I. At all times, while on probation, Respondent shall maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If Respondent's pharmacy technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

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

K. It is a violation of probation for Respondent to work less than 80 hours per month as a pharmacy technician. Regardless of residency, for any reason, should he cease practicing as a pharmacy technician in California, Respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive years.

"Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice as a pharmacy technician as defined in Business and Professions Code section 4028.

L. Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of documented medical treatment. Upon request of the Board, Respondent shall provide documentation from the licensed practitioner that the prescription was legitimately issued and is a necessary part of the treatment of Respondent. Additionally, Respondent shall cause the prescribing practitioner to notify the Board in writing, indicating his/her awareness of the chemical abuse.

M. Within 30 days of the effective date of this Decision, Respondent shall attend regularly a board-approved recognized and established substance abuse recovery support group in California (e.g., Alcoholic Anonymous, Cocaine Anonymous, etc.). He must attend at least one group meeting per week. He shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation, unless modified by the Board.

N. At his own expense, Respondent shall participate in random drug testing, including but not limited to, biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period, and the frequency of testing will be determined by the Board. At all times, Respondent shall cooperate with the Board, and, when directed, shall submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any confirmed positive drug test shall result in the immediate suspension of practice by Respondent. He may not resume the practice of pharmacy until notified by the Board in writing.

O. Within 10 days of the effective date of this Decision, Respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising him during working hours. The work site monitor shall report to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that Respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should Respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within 10 days of commencing new employment.

P. If Respondent leaves the geographic area for a period greater than 24 hours, he shall notify the Board, verbally and in writing, of the dates of departure and return, prior to leaving.

Q. If Respondent leaves the State of California to reside or practice outside this State, or for any period exceeding 10 days (including vacation), he must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside the State or any absence exceeding a period of 10 days shall not apply to the reduction of the suspension period.

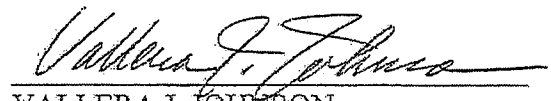
Upon returning to the State of California, Respondent shall not act as a pharmacy technician until notified by the Board that the period of suspension has been completed.

R. If Respondent violates probation in any respect, after giving Respondent notice and an opportunity to be heard, the Board may revoke probation and carry out the disciplinary order which was stayed. 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 extended, until the petition to revoke probation or accusation is heard and decided.

If Respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over him, and probation shall be extended automatically 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 which was stayed.

S. Upon successful completion of probation, Respondent's technician registration shall be fully restored.

DATED: 2/22/07



VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

In the Matter of the Accusation Against: ANDREW ALBERT ASARO, TCH 839 Colorado Ave., #B Chula Vista, CA 91911 Pharmacy Technician Registration No. 56928 Respondent.	Case No. 2908 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

2. On or about June 21, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number 56928 to Andrew Albert Asaro (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and expired on February 28, 2006.

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JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code:

A. Section 4301 of the Code states in pertinent 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:

". . . .

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

". . . .

"(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 a 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.

"....

"....

B. Section 125.3 of the Code states, 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.

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

4. This Accusation is also brought before the Board with reference to section 23152, subdivision (b) of the Vehicle Code (VC), which states that it is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

CHARGES AND ALLEGATIONS

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Substantially Related Criminal Conviction)

5. Respondent is subject to disciplinary action under section 4301(l) for conviction of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician in that on or about December 17, 2004, in *People v. Andrew Albert Asaro*, San Diego County Superior Court Case No. CS189496, respondent was convicted, by his plea of

guilty, of a violation of VC section 23152(b) (driving a vehicle while having 0.08 percent or more, by weight, of alcohol in his blood).

The circumstances surrounding the crime are as follows:

On or about November 19, 2004, respondent drove a vehicle while having a 0.08 percent or more, by weight, of alcohol in his blood.

Respondent was sentenced to five (5) years summary probation, fines in the amount of $1,700.00, and first (drunk driving) conviction program.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Use of Alcohol to an Extent or in a Manner as to be Dangerous or Injurious to Himself or the Public))

6. Respondent is subject to disciplinary action under Code section 4301(h) in that he used alcohol to an extent or in a manner as to be dangerous or injurious to himself or the public, as set forth in paragraph 5 above.

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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number 56928, issued to Andrew Albert Asaro;

2. Ordering Andrew Albert Asaro to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 5/3/06

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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Attorneys for Complainant

FILED
JAN 30 2007
OAH SD

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

In the Matter of the First Amended Accusation Against: ANDREW ALBERT ASARO, TCH 839 Colorado Ave., #B Chula Vista, CA 91911 Pharmacy Technician Registration No. 56928 Respondent.	Case No. 2908 OAH No. L-2006070473 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about June 21, 2004, the Board of Pharmacy issued Pharmacy Technician Registration Number 56928 to Andrew Albert Asaro (Respondent). The Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2008, unless renewed.

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EXHIBIT A

JURISDICTION

3. This Accusation is brought before the Board of Pharmacy (Board), under the authority of the following sections of the Business and Professions Code (Code):

A. Section 482 of the Code provides, in pertinent part, that each board under the code shall develop criteria to evaluate the rehabilitation of a person when considering the suspension or revocation of a license under section 490 and that the board shall take into account all competent evidence of rehabilitation furnished by the licensee.

B. Section 490 of the Code states:

> 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. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which 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 the provisions of Section 1203.4 of the Penal Code.

C. Section 493 of the Code states, in pertinent part:

> 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. . . .

D. Section 4301 of the Code states in pertinent 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:
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> . . . .
>
> (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent

or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . . .

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

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. 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 a 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.

. . . .

E. Section 125.3 of the Code states, 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.

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

4. This Accusation is also brought before the Board with reference to section 23152, subdivision (a), of the Vehicle Code (VC) which states that it is unlawful for any person

to drive a vehicle while under the influence of alcohol and section 23152, subdivision (b), of the Vehicle Code which states that it is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

5. This Accusation is also brought before the Board with reference to the following sections of Title 16 of the California Code of Regulations:

A. Section 1769 of the Regulations states, in pertinent part, that when considering the suspension or revocation of a personal license on the ground that the licensee 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 nature and severity of the misconduct, the total criminal record, the time that has elapsed since the commission of the crime(s), whether the licensee has complied with all terms of probation, restitution or any other sanctions imposed against the licensee, and any evidence of rehabilitation submitted by the licensee.

B. Section 1770 of the Regulations provides, in pertinent part, that for the purpose of suspension or revocation of a personal license pursuant to Division 1.5 (commencing with section 475) of the Business and Professions Code, a crime shall be considered substantially related to the qualifications, functions or duties of a licensee if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare.

CHARGES AND ALLEGATIONS

FIRST CAUSE FOR DISCIPLINE
(July 20, 2006 Criminal Conviction - Driving a Vehicle While Under the Influence of Alcohol on April 23, 2006)

6. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) for conviction of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician in that on or about July 20, 2006, in *People v. Andrew Albert Asaro*, San Diego County Superior Court, Case No. M991952, respondent was convicted, by his plea of guilty, of a violation of VC section 23152(a) (driving a vehicle while under the influence of alcohol).

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7. The circumstances of the conviction are as follows:

On or about April 23, 2006, Respondent drove a vehicle while under the influence of alcohol.

8. On or about July 20, 2006, Respondent was sentenced to five (5) years summary probation, 365 days custody (all but 96 hours of which was suspended), fines in the amount of $1,750.00, twenty (20) days public service, and multiple (drunk driving) conviction program.

SECOND CAUSE FOR DISCIPLINE
(Use of Alcohol to an Extent or in a Manner as to be Dangerous or Injurious to Himself or the Public)

9. Respondent is subject to disciplinary action under Code section 4301(h) in that he used alcohol to an extent or in a manner as to be dangerous or injurious to himself or the public, as set forth in paragraph 7 above.

THIRD CAUSE FOR DISCIPLINE
(December 17, 2004 Criminal Conviction - Driving a Vehicle While Having 0.08 Percent or More, by Weight, of Alcohol in His Blood)

10. Respondent is subject to disciplinary action under Code sections 490 and 4301(l) for conviction of a crime substantially related to the qualifications, functions, or duties of a pharmacy technician in that on or about December 17, 2004, in *People v. Andrew Albert Asaro*, San Diego County Superior Court, Case No. CS 189496, Respondent was convicted, by his plea of guilty, of a violation of VC section 23152(b) (driving a vehicle while having 0.08 percent or more, by weight, of alcohol in his blood).

11. The circumstances surrounding the crime are as follows:

On or about November 19, 2004, Respondent drove a vehicle while having a 0.08 percent or more, by weight, of alcohol in his blood.

12. On or about December 17, 2004, Respondent was sentenced to five (5) years summary probation, fines in the amount of $1,700.00, and first (drunk driving) conviction program.

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FOURTH CAUSE FOR DISCIPLINE
(Use of Alcohol to an Extent or in a Manner as to be Dangerous or Injurious to Himself or the Public)

13. Respondent is subject to disciplinary action under Code section 4301(h) in that he used alcohol to an extent or in a manner as to be dangerous or injurious to himself or the public, as set forth in paragraph 11 above.

FIFTH CAUSE FOR DISCIPLINE
(Conviction of More Than One Misdemeanor Involving the Use, Consumption, or Self-Administration of An Alcoholic Beverage)

14. Respondent is subject to disciplinary action under Code section 4301(k) in that he was convicted of more than one misdemeanor involving the use, consumption, or self-administration of an alcoholic beverage, as set forth in paragraphs 6 and 10 above.

PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number 56928, issued to Andrew Albert Asaro;

2. Ordering Andrew Albert Asaro to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 1/24/07

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

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