

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

In the Matter of the Accusation Against:

Case No. 3850

**MICHAEL TUFO a.k.a. MICHAEL BIAGO
TUFO, a.k.a. MICHAEL BIAGIO TUFO**
53 Southridge Way
Daly City, CA 94014

Pharmacy Technician Registration No. TCH
33538

Respondent.

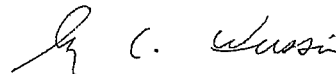
DECISION AND ORDER

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

This decision shall become effective on August 19, 2011.

It is so ORDERED July 20, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
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6 Telephone: (510) 622-2221
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7 *Attorneys for Complainant*

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10 **DEPARTMENT OF CONSUMER AFFAIRS**
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14 **BIAGO TUFO, a.k.a. MICHAEL BIAGIO**
15 **TUFO**
16 **53 Southridge Way**
17 **Daly City, CA 94014**
18 **Pharmacy Technician License No. TCH**
19 **33538**

STIPULATED SURRENDER OF
LICENSE AND ORDER

20 Respondent.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
22 proceeding that the following matters are true:

23 PARTIES

24 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
25 She brought this action solely in her official capacity and is represented in this matter by Kamala
26 D. Harris, Attorney General of the State of California, by Susana A. Gonzales, Deputy Attorney
27 General.

28 2. Michael Tufo, also known as Michael Biago Tufo, also known as Michael Biagio
Tufo (Respondent) is represented in this proceeding by attorney Mitri Hanania, whose address is
620 Jefferson Avenue, Redwood City, CA 94063.

1 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
2 executed by an authorized representative of each of the parties.

3 14. In consideration of the foregoing admissions and stipulations, the parties agree that
4 the Board may, without further notice or formal proceeding, issue and enter the following Order:

5 **ORDER**

6 IT IS HEREBY ORDERED that Respondent Michael Tufo, also known as Michael Biago
7 Tufo, also known as Michael Biagio Tufo surrenders Pharmacy Technician License No. TCH
8 33538 as of the effective date of this decision. Respondent shall relinquish his or her pharmacy
9 technician license to the board within ten (10) days of the effective date of this decision.

10 15. The surrender of Respondent's Pharmacy Technician License and the acceptance of
11 the surrendered license by the Board shall constitute the imposition of discipline against
12 Respondent. This stipulation constitutes a record of the discipline and shall become a part of
13 Respondent's license history with the Board.

14 16. Respondent shall lose all rights and privileges as a Pharmacy Technician in California
15 as of the effective date of the Board's Decision and Order.

16 17. Respondent understands and agrees that if he ever files an application for licensure or
17 a petition for reinstatement in the State of California, the board shall treat it as a new application
18 for licensure.

19 18. Respondent stipulates that should he apply for any license from the board on or after
20 the effective date of this decision, investigation and prosecution costs in the amount of \$1,757.50
21 shall be paid to the board prior to issuance of the license.

22 19. If Respondent should ever apply or reapply for a new license or certification, or
23 petition for reinstatement of a license, by any other health care licensing agency in the State of
24 California, all of the charges and allegations contained in Accusation, No. 3850 shall be deemed
25 to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any
26 other proceeding seeking to deny or restrict licensure.

27 20. Respondent may not apply for any license, permit, or registration from the board for
28 three (3) years from the effective date of this decision. Respondent stipulates that should he apply

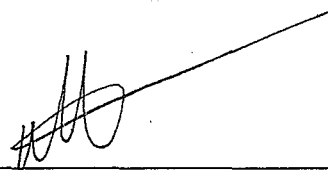
1 for any license from the board on or after the effective date of this decision, all allegations set
2 forth in the Accusation shall be deemed to be true, correct and admitted by respondent when the
3 board determines whether to grant or deny the application. Respondent shall satisfy all
4 requirements applicable to that license as of the date the application is submitted to the board,
5 including, but not limited to certification by a nationally recognized body prior to the issuance of
6 a new license. Respondent is required to report this surrender as disciplinary action.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Surrender of License and Order and have fully
9 discussed it with my attorney, Mitri Hanania. I understand the stipulation and the effect it will
10 have on my Pharmacy Technician License. I enter into this Stipulated Surrender of License and
11 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
12 of the Board of Pharmacy.

13
14 DATED: _____

5/20/11


MICHAEL TUFO
Respondent

16 I have read and fully discussed with Respondent Michael Tufo, also known as Michael
17 Biago Tufo, also known as Michael Biagio Tufo the terms and conditions and other matters
18 contained in this Stipulated Surrender of License and Order. I approve its form and content.

19 DATED: _____

5/20/11


MITRI HANANIA
Attorney for Respondent


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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated: 5/25/11

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
DIANN SOKOLOFF
Supervising Deputy Attorney General



SUSANA A. GONZALES
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 3850

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
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TUFO
14 **53 Southridge Way**
Daly City, CA 94014
15 **Pharmacy Technician License No. TCH**
33538

A C C U S A T I O N

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 June 15, 2000, the Board of Pharmacy issued Pharmacy Technician
23 License Number TCH 33538 to Michael Tufo, also known as Michael Biago Tufo, also known as
24 Michael Biagio Tufo (Respondent). The Pharmacy Technician License was in full force and
25 effect at all times relevant to the charges brought in this Accusation and will expire on September
26 30, 2011, unless renewed.
27
28

JURISDICTION

1
2 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
3 Consumer Affairs, under the authority of the following laws. All section references are to the
4 Business and Professions Code unless otherwise indicated.

5 4. Section 4300 of the Code provides, in pertinent part, that any license issued by the
6 Board may be suspended or revoked.

7 5. Section 118, subdivision (b), of the Code provides, in pertinent part, that the
8 expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary
9 action during the period within which the license may be renewed, restored, reissued or
10 reinstated.

STATUTORY/REGULATORY PROVISIONS

11
12 6. Section 4301 of the Code states:

13 “The board shall take action against any holder of a license who is guilty of unprofessional
14 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.
15 Unprofessional conduct shall include, but is not limited to, any of the following:

16 ...
17 “(h) The administering to oneself, of any controlled substance, or the use of any dangerous
18 drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to
19 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
20 to the extent that the use impairs the ability of the person to conduct with safety to the public the
21 practice authorized by the license.

22 ...
23 “(j) The violation of any of the statutes of this state, or any other state, or of the United
24 States regulating controlled substances and dangerous drugs.

25 ...
26 “(l) The conviction of a crime substantially related to the qualifications, functions, and
27 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
28 (commencing with Section 801) of Title 21 of the United States Code regulating controlled

1 substances or of a violation of the statutes of this state regulating controlled substances or
2 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
3 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
4 The board may inquire into the circumstances surrounding the commission of the crime, in order
5 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
6 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
7 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
8 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
9 of this provision. The board may take action when the time for appeal has elapsed, or the
10 judgment of conviction has been affirmed on appeal or when an order granting probation is made
11 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
12 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
13 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
14 indictment.”

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

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

22 DRUGS

23 8. “Cocaine” is a Schedule II drug as listed under California Health and Safety Code
24 section 11055, subdivision (b)(6). It is a highly addictive recreational drug.

25 COST RECOVERY

26 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
27 administrative law judge to direct a licentiate found to have committed a violation or violations of
28

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct – Use of Alcohol in a Dangerous Manner)
5 (Bus. & Prof. Code § 4301(h))

6 10. Respondent has subjected his Pharmacy Technician's License to disciplinary action
7 under Code section 4301, subdivision (h), in that he engaged in unprofessional conduct by using
8 alcohol in a dangerous manner. The circumstances are as follows:

9 11. On or about February 18, 2010; at approximately 1:10 a.m., two California Highway
10 Patrol (CHP) officers (Officer 1 and Officer 2), were on routine patrol in San Mateo County, in a
11 clearly marked CHP vehicle. The officers observed Respondent's gold Sports Utility Vehicle
12 traveling in the northbound direction on Interstate 280 at a high rate of speed, while completely
13 straddling the #2 and #3 lanes. The officers entered the freeway and obtained a bumper pace on
14 the vehicle. The officers determined that Respondent was travelling at approximately 77 miles-
15 per-hour. The officers observed Respondent's SUV weaving in and out of its lane, in violation of
16 California Vehicle Code ("CVC") section 21658, subdivision (a). The officers activated the
17 forward red lights and initiated an enforcement stop. The SUV slowly pulled to the right shoulder
18 and stopped.

19 12. Officer 1 approached the right side of Respondent's SUV and illuminated the right
20 side of the passenger compartment with his flashlight, and observed Respondent in the driver's
21 seat. Officer 1 informed Respondent that he observed him weaving on the freeway and Officer 1
22 wanted to ensure that Respondent was okay. Respondent stated that he was "totally fine."
23 Respondent informed Officer 1 that he was coming from a bar in San Mateo. Officer 1 detected
24 the odor of an alcoholic beverage emitting from inside of the vehicle. As Respondent spoke, his
25 speech was fast and slurred. Officer 1 requested Respondent's driver's license, which identified
26 Respondent as the driver of the SUV. When Officer 1 asked Respondent whether he had been
27 drinking, Respondent stated that he had consumed one beer. Officer 1 directed Respondent to
28 walk to the back of the SUV, where he proceeded to ask Respondent a series of pre-field sobriety

1 questions. Officer 1 continued to smell the odor of alcohol on Respondent's breath and body.
2 Officer 1 directed Respondent in a series of field sobriety tests, which Respondent failed to
3 perform as explained or demonstrated. Officer 1 administered two Preliminary Alcoholic
4 Screening Device tests to Respondent. The results of the first test showed that Respondent had a
5 Blood Alcohol Content of .098%, and the results of the second test showed a Blood Alcohol
6 Content of .097%. Based upon Respondent's poor driving, his objective signs and symptoms of
7 intoxication, his unsatisfactory performance of the field sobriety tests, and his admission that he
8 had consumed alcohol prior to driving, Officer 1 arrested Respondent at approximately 1:31 a.m.
9 for violation of CVC 23152, subdivision (a) (driving under the influence of a drug or alcohol, or
10 both). Respondent was later charged with violating this section of the vehicle code as well as
11 violating CVC 23152, subdivision (b) (driving with a blood alcohol content of .08 percent or
12 higher), both misdemeanors.

13 SECOND CAUSE FOR DISCIPLINE

14 (Unprofessional Conduct – Violation of Statute Regulating Controlled Substances)
15 (Bus. & Prof. Code § 4301(j))

16 13. Complainant realleges the allegations contained in paragraphs 10 through 12 above,
17 and incorporates them by reference as if fully set forth here.

18 14. Respondent has subjected his Pharmacy Technician's License to disciplinary action
19 under Code section 4301, subdivision (j), in that he violated California Health and Safety Code
20 section 11350, subdivision (a) (possession of a controlled substance), a statute of this State
21 regulating controlled substances and dangerous drugs. The circumstances are as follows:

22 15. On or about February 18, 2010, at approximately 1:31 a.m., after Respondent was
23 placed under arrest for violating CVC 23152, subdivision (a) (driving under the influence of a
24 drug or alcohol, or both), he was searched by Officer 1 pursuant to CHP policy. Officer 1
25 discovered a small plastic baggie containing a white substance in Respondent's left front pocket,
26 which Officer 1 believed to be cocaine. Respondent was transported to San Mateo County Jail
27 (SMCJ) for a chemical test. The white substance in the baggie was tested and proved positive for
28 cocaine.

1 16. On or about February 18, 2010, at approximately 2:28 a.m., while at SMCI,
2 Respondent was advised of his Miranda rights by Officer 1, which he waived. Respondent told
3 Officer 1 that the substance in the baggie was cocaine. Respondent stated that he acquired the
4 cocaine from a friend, and the last time he had used the cocaine was around 8:30 p.m. that
5 evening. Respondent stated that the cocaine was worth approximately \$40, and that he had also
6 used it the previous Monday. Respondent further admitted that he had consumed three large Bud
7 Light beers that night and not just one beer. Respondent was later charged with violating
8 California Health and Safety Code section 11350, subdivision (a) (Possession of Controlled
9 Substance), a felony.

10 THIRD CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct - Conviction)

12 (Bus. & Prof. Code § 4301(l); Cal. Code Regs., tit. 16, § 1770)

13 17. Complainant realleges the allegations contained in paragraphs 10 through 12 above,
14 and incorporates them by reference as if fully set forth here.

15 18. Respondent has subjected his Pharmacy Technician's License to disciplinary action
16 under Code section 4301, subdivision (l), and California Code of Regulations, title 16, section
17 1770, in that he was convicted of a crime substantially related to the qualifications, functions, and
18 duties of a licensee. The circumstances are that on or about August 30, 2010, in a criminal case
19 entitled *The People of the State of California v. Michael Biago Tufo*, in the Superior Court of San
20 Mateo County, Case Number NF392444A, Respondent was convicted by plea of nolo contendere
21 of one count of violating CVC section 23152, subdivision (b) (driving under the influence with a
22 .08 percent or higher blood alcohol content), a misdemeanor. Respondent was sentenced to three
23 years of probation and two days in jail. Respondent was further ordered to: (1) pay various fees
24 and fines; (2) obey all laws and orders of the court; (3) enter and complete the First Offender
25 Program; (4) not drive with any alcohol in his blood during the probationary period; and (5)
26 submit to alcohol use test whenever directed by a probation officer or peace officer.
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PRAYER

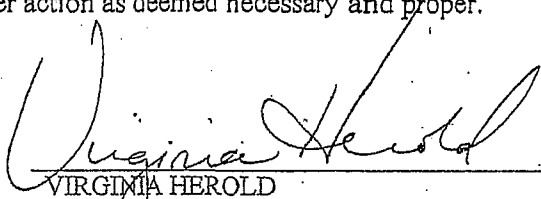
WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician License Number TCH 33538, issued to Michael Tufo, also known as Michael Biago Tufo, also known as Michael Biagio Tufo;

2. Ordering Michael Tufo, also known as Michael Biago Tufo, also known as Michael Biagio Tufo 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: 2/23/11



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

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