

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

In the Matter of the Statement of Issues Against:

Case No. 3843

JAMES POON
429 Rickover Street
Vallejo, CA 94592

Pharmacist Intern License Applicant

Respondent.

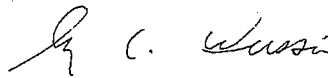
DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary 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 June 1, 2011.

It is so ORDERED on May 16, 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
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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
Against:

12 **JAMES POON**
13 **429 Rickover Street**
14 **Vallejo, CA 94592**
Pharmacy Intern License

15 Respondent.

Case No. 3843

16 **STIPULATED SETTLEMENT AND**
17 **DISCIPLINARY ORDER**

18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

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

25 2. Respondent James Poon (Respondent) is represented in this proceeding by attorney
26 Gregory P. Matzen, whose address is: Lewis Brisbois Bisgaard & Smith LLP – Sacramento,
27 2850 Gateway Oaks Drive, Suite 450, Sacramento, CA 95833.
28

1 9. Respondent agrees that his Pharmacy Intern License is subject to denial and he agrees
2 to be bound by the Board of Pharmacy (Board)'s probationary terms as set forth in the
3 Disciplinary Order below.

4 CONTINGENCY

5 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
6 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may
7 communicate directly with the Board regarding this stipulation and settlement, without notice to
8 or participation by Respondent or his counsel. By signing the stipulation, Respondent
9 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
10 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
11 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
12 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
13 and the Board shall not be disqualified from further action by having considered this matter.

14 11. The parties understand and agree that facsimile copies of this Stipulated Settlement
15 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
16 effect as the originals.

17 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an
18 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
19 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
20 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary
21 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a
22 writing executed by an authorized representative of each of the parties.

23 13. In consideration of the foregoing admissions and stipulations, the parties agree that
24 the Board may, without further notice or formal proceeding, issue and enter the following
25 Disciplinary Order:
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1 DISCIPLINARY ORDER

2 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory
3 requirements for issuance of license, a Pharmacy Intern license shall be issued to Respondent
4 James Poon and immediately revoked. The revocation will be stayed and Respondent is placed
5 on probation for four (4) years upon the following terms and conditions.

6 **1. Obey All Laws**

7 Respondent shall obey all state and federal laws and regulations.

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

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

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

21 **2. Report to the Board**

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

3 **3. Interview with the Board**

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

9 **4. Cooperate with Board Staff**

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

13 **5. Continuing Education**

14 Respondent shall provide evidence of efforts to maintain skill and knowledge as a
15 pharmacist as directed by the board or its designee.

16 **6. Notice to Employers**

17 During the period of probation, respondent shall notify all present and prospective
18 employers of the decision in case number 3843 and the terms, conditions and restrictions imposed
19 on respondent by the decision, as follows:

20 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
21 respondent undertaking any new employment, respondent shall cause his direct supervisor,
22 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
23 tenure of employment) and owner to report to the board in writing acknowledging that the listed
24 individual(s) has/have read the decision in case number 3843, and terms and conditions imposed
25 thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s)
26 submit timely acknowledgment(s) to the board.

27 If respondent works for or is employed by or through a pharmacy employment service,
28 respondent must notify his direct supervisor, pharmacist-in-charge, and owner at every entity

1 licensed by the board of the terms and conditions of the decision in case number 3843 in advance
2 of the respondent commencing work at each licensed entity. A record of this notification must be
3 provided to the board upon request.

4 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
5 (15) days of respondent undertaking any new employment by or through a pharmacy employment
6 service, respondent shall cause his direct supervisor with the pharmacy employment service to
7 report to the board in writing acknowledging that he has read the decision in case number 3843
8 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
9 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

17 **7. No Supervision of Interns, Serving as Pharmacist-in-Charge (PIC), Serving as**
18 **Designated Representative-in-Charge, or Serving as a Consultant**

19 During the period of probation, respondent shall not supervise any intern pharmacist, be the
20 pharmacist-in-charge or designated representative-in-charge of any entity licensed by the board
21 nor serve as a consultant unless otherwise specified in this order. Assumption of any such
22 unauthorized supervision responsibilities shall be considered a violation of probation.

23 **8. Probation Monitoring Costs**

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

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1 **9. Status of License**

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

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

9 **10. License Surrender While on Probation/Suspension**

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

17 Upon acceptance of the surrender, respondent shall relinquish his pocket and wall license to
18 the board within ten (10) days of notification by the board that the surrender is accepted.
19 Respondent may not reapply for any license from the board for three (3) years from the effective
20 date of the surrender. Respondent shall meet all requirements applicable to the license sought as
21 of the date the application for that license is submitted to the board, including any outstanding
22 costs.

23 **11. Notification of a Change in Name, Residence Address, Mailing Address or**
24 **Employment**

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

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

5 12. Tolling of Probation

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

12 Should respondent, regardless of residency, for any reason (including vacation) cease
13 practicing as a pharmacist for a minimum of forty (40) hours per calendar month in California,
14 respondent must notify the board in writing within ten (10) days of the cessation of practice, and
15 must further notify the board in writing within ten (10) days of the resumption of practice. Any
16 failure to provide such notification(s) shall be considered a violation of probation.

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

20 "Cessation of practice" means any calendar month during which respondent is
21 not practicing as an intern pharmacist for at least 40 hours, as defined by Business
22 and Professions Code section 4000 et seq. "Resumption of practice" means any
23 calendar month during which respondent is practicing as a pharmacist for at least 40
24 hours as an intern pharmacist as defined by Business and Professions Code section
25 4000 et seq.

26 13. Violation of Probation

27 If a respondent has not complied with any term or condition of probation, the board shall
28 have continuing jurisdiction over respondent, and probation shall automatically be extended, until

1 all terms and conditions have been satisfied or the board has taken other action as deemed
2 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
3 to impose the penalty that was stayed.

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

11 14. **Completion of Probation**

12 Upon written notice by the board or its designee indicating successful completion of
13 probation, respondent's probation will be lifted.

14 15. **Pharmacists Recovery Program (PRP)**

15 Within thirty (30) days of the effective date of this decision, respondent shall contact the
16 Pharmacists Recovery Program (PRP) for evaluation, and shall immediately thereafter enroll,
17 successfully participate in, and complete the treatment contract and any subsequent addendums as
18 recommended and provided by the PRP and as approved by the board or its designee. The costs
19 for PRP participation shall be borne by the respondent.

20 If respondent is currently enrolled in the PRP, said participation is now mandatory and as of
21 the effective date of this decision is no longer considered a self-referral under Business and
22 Professions Code section 4362, subdivision (c)(2). Respondent shall successfully participate in
23 and complete his current contract and any subsequent addendums with the PRP.

24 Failure to timely contact or enroll in the PRP, or successfully participate in and complete
25 the treatment contract and/or any addendums, shall be considered a violation of probation.

26 Probation shall be automatically extended until respondent successfully completes the PRP.
27 Any person terminated from the PRP program shall be automatically suspended by the board.
28 Respondent may not resume the practice of pharmacy until notified by the board in writing.

1 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
2 licensed practitioner as part of a documented medical treatment shall result in the automatic
3 suspension of practice by respondent and shall be considered a violation of probation.

4 Respondent may not resume the practice of pharmacy until notified by the board in writing.

5 During suspension, respondent shall not enter any pharmacy area or any portion of the
6 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
7 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
8 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
9 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
10 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
11 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
12 and controlled substances. Respondent shall not resume practice until notified by the board.

13 During suspension, respondent shall not engage in any activity that requires the
14 professional judgment of a pharmacist. Respondent shall not direct or control any aspect of the
15 practice of pharmacy. Respondent shall not perform the duties of a pharmacy technician or a
16 designated representative for any entity licensed by the board.

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

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

21 Respondent shall pay administrative fees as invoiced by the PRP or its designee. Fees not
22 timely paid to the PRP shall constitute a violation for probation. The board will collect unpaid
23 administrative fees as part of the annual probation monitoring costs if not submitted to the PRP.

24 16. **Random Drug Screening**

25 Respondent, at his own expense, shall participate in random testing, including but not
26 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
27 screening program as directed by the board or its designee. Respondent may be required to
28 participate in testing for the entire probation period and the frequency of testing will be

1 determined by the board or its designee. At all times, respondent shall fully cooperate with the
2 board or its designee, and shall, when directed, submit to such tests and samples for the detection
3 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
4 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
5 of probation. Upon request of the board or its designee, respondent shall provide documentation
6 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
7 a necessary part of the treatment of the respondent. Failure to timely provide such documentation
8 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any
9 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment
10 shall be considered a violation of probation and shall result in the automatic suspension of
11 practice of pharmacy by respondent. Respondent may not resume the practice of pharmacy until
12 notified by the board in writing.

13 During suspension, respondent shall not enter any pharmacy area or any portion of the
14 licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of
15 drugs which is licensed by the board, or any manufacturer, or where dangerous drugs and devices
16 or controlled substances are maintained. Respondent shall not practice pharmacy nor do any act
17 involving drug selection, selection of stock, manufacturing, compounding, dispensing or patient
18 consultation; nor shall respondent manage, administer, or be a consultant to any licensee of the
19 board, or have access to or control the ordering, manufacturing or dispensing of dangerous drugs
20 and controlled substances. Respondent shall not resume practice until notified by the board.

21 During suspension respondent shall not engage in any activity that requires the professional
22 judgment of a pharmacist. Respondent shall not direct or control any aspect of the practice of
23 pharmacy. Respondent shall not perform the duties of a pharmacy technician or a designated
24 representative for any entity licensed by the board.

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

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

1 **17. Abstain from Drugs and Alcohol Use**

2 Respondent shall completely abstain from the possession or use of alcohol, controlled
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
5 request of the board or its designee, respondent shall provide documentation from the licensed
6 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
7 treatment of the respondent. Failure to timely provide such documentation shall be considered a
8 violation of probation. Respondent shall ensure that he is not in the same physical location as
9 individuals who are using illicit substances even if respondent is not personally ingesting the
10 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
11 not supported by the documentation timely provided, and/or any physical proximity to persons
12 using illicit substances, shall be considered a violation of probation.

13 **18. No Ownership of Licensed Premises**

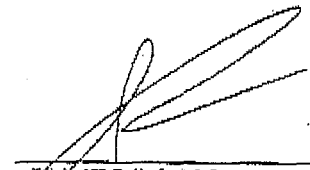
14 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,
15 administrator, member, officer, director, trustee, associate, or partner of any business, firm,
16 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell
17 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)
18 days following the effective date of this decision and shall immediately thereafter provide written
19 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide
20 documentation thereof shall be considered a violation of probation.

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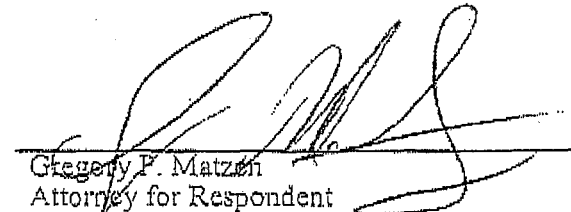
ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Gregory P. Matzen. I understand the stipulation and the effect it will have on my Pharmacy Intern License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED: 4/13/11


JAMES POON
Respondent

I have read and fully discussed with Respondent James Poon the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

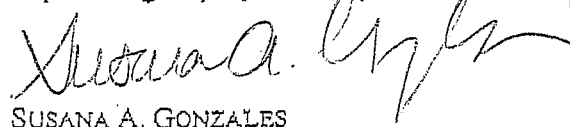
DATED: 4/13/11


Gregory P. Matzen
Attorney for Respondent

ENDORSEMENT

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

Dated: 4/13/11

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

Statement of Issues No. 3843

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
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7 *Attorneys for Complainant*

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Against:
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13 429 Rickover Street
14 Vallejo, CA 94592
15 Respondent.

Case No. 3843

STATEMENT OF ISSUES

16
17 Complainant alleges:

18 PARTIES

- 19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.
21 2. On or about August 10, 2009, the Board of Pharmacy, Department of Consumer
22 Affairs, received an application for Registration as an Intern Pharmacist from James Poon
23 (Respondent). On or about August 3, 2009, James Poon certified under penalty of perjury to the
24 truthfulness of all statements, answers, and representations in the application. The Board denied
25 the application on June 29, 2010.
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1 area. At approximately 2:20 a.m., the officer and his partner arrived at the scene of the accident
2 where Respondent was being treated for injuries by the Los Angeles Fire Department.
3 Respondent was standing next to the vehicle, a BMW, that was involved in the accident.
4 Respondent stated that he was the driver of the vehicle. The vehicle was facing in an easterly
5 direction on the right shoulder of the freeway. The front end of the vehicle was ripped down the
6 center into the passenger compartment. The engine block was exposed and dislodged from the
7 engine compartment, the windshield was shattered, the hood was crushed, and the entire front end
8 of the vehicle and all of its components were dislodged and smashed. The right front door of the
9 vehicle was dislodged, the right and left front windows were blown out, the rear bumper was torn
10 off, the roof was buckled, the entire left and right side of the vehicle had scrapes and dents, and
11 the front left and right tires were missing from the vehicle.

12 11. The CHP officer began to question respondent about the events leading up to the
13 crash and Respondent was evasive in his responses. Respondent claimed that he had been driving
14 in the lane farthest to the right of the four lane freeway, and that he was travelling at about 65
15 miles-per-hour at the time of the collision. The officer noted that Respondent showed signs of
16 intoxication, including red and watery eyes, a strong odor of an alcoholic beverage on his breath,
17 and slow, slurred speech. The officer asked Respondent if he had been drinking and Respondent
18 said "yes." When asked how much he had had to drink, Respondent stated "a little bit."
19 Respondent then stated that he had consumed one Heineken beer earlier in the evening. After
20 Respondent refused to answer pre-field sobriety questions, the officer asked Respondent to
21 complete a few field sobriety tests, which Respondent was unable to complete due to his level of
22 intoxication and his injuries, which he sustained in the collision. The officer admonished
23 Respondent and asked him to take a Preliminary Alcohol Screening (PAS) test, which
24 Respondent took twice. The results of the first PAS test showed that Respondent had a blood
25 alcohol content of .133 percent, and the results of the second test showed a blood alcohol content
26 of .126 percent. The officer determined that Respondent was under the influence of an alcoholic
27 beverage at the time of the collision and that he was unable to safely operate a motor vehicle.
28 Respondent was placed under arrest at 2:38 a.m. and transported to USC medical center, where

1 blood was drawn from his arm. Respondent was medically cleared from USC Medical Center at
2 approximately 8:30 a.m., on April 30, 2006. Respondent was transported to the Los Angeles
3 County Sherriff's Department Inmate Reception Center, where he was booked without incident.
4 The CHP officer determined that Respondent caused the collision by driving under the influence
5 of alcohol at an unsafe speed, which caused him to lose control of his vehicle and collide into
6 prohibitory traffic signs, causing the subsequent collisions.

7 12. Respondent had three passengers in his vehicle at the time of the collision. At least
8 two of the three passengers were transported to the emergency room following the collision. One
9 of the passengers, Warren Phan, sustained extensive injuries to his feet and ankles. Mr. Phan's
10 left foot and ankle were completely shattered, his right foot and ankle had multiple fractures, and
11 he had to undergo several operations. Mr. Phan was expected to be in the hospital for nearly one
12 month following the accident and was told by a doctor that he would need physical therapy for at
13 least one year after the collision.

14 SECOND CAUSE FOR DENIAL OF APPLICATION

15 (Conviction of Substantially Related Crime)

16 (Bus. & Prof. Code §§ 480(a)(1), 4300(c), 4301(l); Cal. Code Regs., tit. 16, § 1770)

17 13. Complainant realleges the allegations contained in paragraphs 9 through 12 above,
18 and incorporates them by reference as if fully set forth here.

19 14. Respondent's application is subject to denial under Code section 480, subdivision
20 (a)(1), and section 4300, subdivision (c), as defined by section 4301, subdivision (l), and under
21 California Code of Regulations, title 16, section 1770, in that he was convicted of a crime
22 substantially related to the qualifications, functions, and duties of a licensee. The circumstances
23 are that on or about June 25, 2007, in a case entitled *The People of the State of California v.*
24 *James Poon*, in the Los Angeles County Superior Court, Case Number BA306140, Respondent
25 was convicted by plea of nolo contendere to one count of violating California Vehicle Code
26 Section 23153, subdivision (b) (driving under the influence with a .08 percent or higher blood
27 alcohol content and proximately causing bodily injury to any person other than the driver), a
28 misdemeanor. Respondent was sentenced to three years of probation and three days in jail.

1 Respondent was ordered to pay various fees and fines and to enroll in and successfully complete a
2 first-offender alcohol and other drug education and counseling program.

3 THIRD CAUSE FOR DENIAL OF APPLICATION

4 (Unprofessional Conduct – Dangerous or Injurious Use of Alcohol)
5 (Bus. & Prof. Code §§ 480(a)(3), 4300(c), 4301(h))

6 15. Respondent's application is subject to denial under Code section 480, subdivision
7 (a)(3), by reference to section 4301, subdivision (h), and under section 4300, subdivision (c), as
8 defined by section 4301, subdivision (h), in that Respondent engaged in unprofessional conduct
9 by using alcohol in a dangerous manner. The circumstances are as follows:

10 16. On or about February 28, 2010, at approximately 3:15 a.m., two California CHP
11 officers (Officer 1 and Officer 2) were travelling Northbound on U.S. Highway 101, just north of
12 the Golden Gate Bridge. Officer 1 was riding in the passenger seat of the fully marked CHP
13 vehicle, and Officer 2 was driving. Both officers noticed Respondent's vehicle, a black BMW,
14 travelling ahead of their vehicle in the #2 lane. The officers conducted a speedometer pace.¹
15 Officer 1 determined that Respondent was travelling at a speed greater than 74 miles-per-hour in a
16 posted 55 miles-per-hour zone. Respondent's vehicle drifted two to three feet into the #1 lane on
17 numerous occasions during the speedometer pace, in violation of the vehicle code. Respondent
18 also traveled onto the white delineator line between the #2 and #3 lanes multiple times, in
19 violation of the vehicle code. Officer 2 activated the patrol vehicle's rear amber warning lights to
20 warn other motorists of the potential hazard ahead. Officer 2 then activated the patrol vehicle's
21 overhead emergency lights, initiating an enforcement stop of Respondent's vehicle based upon
22 Respondent's violations of the vehicle code. Respondent's vehicle traveled for approximately
23 one-half mile without signaling, yielding, or reacting to the overhead emergency lights.
24 Respondent finally yielded by exiting an off-ramp off of U.S. Highway 101.

25 17. Once Respondent yielded to the enforcement stop, Officer 1 approached the
26 passenger side of Respondent's vehicle, while Officer 2 approached the driver's side of the

27 ¹A speedometer pace is when an officer follows behind a person's vehicle and uses his
28 speedometer to estimate the vehicle's speed.

1 vehicle. Officer 1 immediately detected a strong odor of alcohol emitting from the vehicle.
2 Officer 2 explained the reason for the stop to Respondent and requested his driver's license. The
3 driver's license identified Respondent as the driver of the BMW. There was one passenger in
4 Respondent's vehicle. Officer 1 noticed that Respondent's eyes were very watery, and he
5 appeared dry-mouthed. Officer 2 asked Respondent whether he had consumed any alcohol, and
6 Respondent stated that he had not, and that he was designated driver. Officer 2 asked Respondent
7 to exit the vehicle and directed him to the right front passenger side of the vehicle.

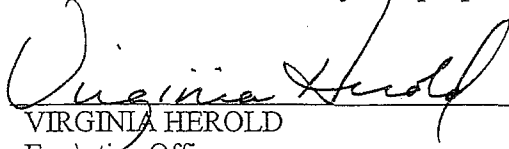
8 18. Officer 1 asked Respondent about his day, and Respondent stated that he was coming
9 from a club in San Francisco and was on his way to Vallejo. Respondent again stated that he was
10 the designated driver, and further stated that his passenger was the one who was intoxicated.
11 Respondent told Officer 1 to give him a speeding ticket and let him go, stating that the officer was
12 wasting Respondent's time since he only had one drink that night. Officer 1 reminded
13 Respondent that he previously stated that had not consumed any alcohol. Respondent explained
14 that he had one margarita. Officer 1 asked how large the margarita was, and Respondent stated
15 that it was a very large margarita. Respondent proceeded to tell Officer 1 that he was going to
16 ruin Respondent's career. Officer 1 told Respondent that he could smell alcohol on his breath and
17 body. Respondent claimed that he was okay to drive and again stated that he was the designated
18 driver. Officer 1 then administered a series of field sobriety tests (FSTs) to Respondent.
19 Respondent failed to perform the FSTs satisfactorily. Officer 1 administered the Preliminary
20 Alcohol Screening Device test to Respondent twice. The first test showed that Respondent had a
21 blood alcohol content of .097%, and the second test showed a blood alcohol content of .092%.
22 Based upon Respondent's objective signs of intoxication and his inability to perform the field
23 sobriety tests satisfactorily, Officer 1 determined that Respondent was driving under the influence
24 and was unable to safely operate a motor vehicle. Officer 1 further determined that Respondent's
25 further operation of a motor vehicle would be a hazard to Respondent, his passenger, and other
26 motorists. At approximately 3:30 a.m., Officer 1 arrested Respondent and transferred him to
27 Marin County Jail.
28

1 PRAYER

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

- 4 1. Denying the application of James Poon for a Registration as an Intern Pharmacist;
5 2. Taking such other and further action as deemed necessary and proper.

6 DATED: 1/27/11


7 VIRGINIA HEROLD
8 Executive Officer
9 Board of Pharmacy
10 Department of Consumer Affairs
11 State of California
12 *Complainant*

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