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California State Board of Pharmacy  
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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY  
DEPARTMENT OF CONSUMER AFFAIRS  
GOVERNOR EDMUND G. BROWN JR.

RECEIVED BY MAIL  
BOARD OF PHARMACY

2014 OCT 14 AM 9:17

### APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>CHARAN DASS</u>	Case No. <u>AC 4117</u>
Address of Record: <u>9067 RICHBOROUGH WAY</u> <u>EIK GROVE CA 95624.</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4117, I hereby request to surrender my pharmacy technician license, License No. TCH 64051. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

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

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

Applicant's Signature [Signature]  
Executive Officer's Approval [Signature]

Date 10/11/14  
Date 11/4/14

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as mandated by Title 16, California Code of Regulations section 1799. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or other investigative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1799.10 of the Civil Code.

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

In the Matter of the Accusation Against:

Case No. 4117

**CHARAN DASS**  
8221 s. Country Way  
Sacramento, CA 95828

Pharmacy Technician License No. TCH 64051

Respondent.

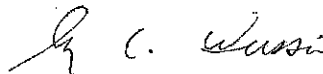
**DECISION AND ORDER**

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on December 28, 2012.

It is so ORDERED on November 28, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

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

In the Matter of the Accusation Against :

CHARAN DASS

Pharmacy Technician License No. TCH  
64051

Respondent.

Case No. 4117

OAH No. 2012010457

**PROPOSED DECISION**

This matter was heard on August 23, 2012, before Ann Elizabeth Sarli, Administrative Law Judge, State of California, Office of Administrative Hearings (OAH), in Sacramento, California.

Complainant, Virginia Herold, Executive Officer of the California Board of Pharmacy (Board), was represented by Karen Denvir, Deputy Attorney General.

Charan Dass was represented by Jeff Raven, Attorney at Law.

Oral and documentary evidence was submitted. The record was closed and the matter submitted for decision on August 23, 2012.

**FACTUAL FINDINGS**

1. On July 20, 2005, the Board issued Pharmacy Technician License Number TCH 64051 to Charan Dass (respondent). The license was in full force and effect at all times relevant to this proceeding.

2. On November 9, 2011, complainant, in her official capacity, made the Accusation and caused it to be filed thereafter. Respondent timely filed a Notice of Defense. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500, et. seq.

3. On August 4, 2012, in the Sacramento County Superior Court,<sup>1</sup> respondent was convicted on his plea of nolo contendere of a misdemeanor violation of Penal Code section 273.5, subdivision (a)<sup>2</sup> (corporal injury on spouse). Respondent was sentenced to pay fines and assessments, serve 20 days in county jail, which time could be converted to sheriff's work program, and was placed on formal probation for three years. He was also ordered to complete a batterer's treatment program. His probation terminates in August 2013. On October 12, 2010, respondent's formal misdemeanor probation was modified to informal probation, after he successfully completed a batterer's treatment program.

*Facts and Circumstances of Conviction and Substantial Relationship*

4. The facts and circumstances of respondent's conviction are in dispute. Complainant asserts that the information contained in the Sacramento Police Department Arrest Report (arrest report) set out the facts underlying his conviction. Complainant pled those facts in the Accusation, but did not provide supporting evidence other than the arrest report. The arrest report includes statements by respondent and his wife, and the officer's observations. Respondent's wife reported that at 10 a.m. on April 5, 2009, respondent and she had been arguing. He forced 5 to 7 pills into her mouth and made her swallow them. He then took a belt and slapped her left arm and side approximately 8 to 10 times. He repeatedly told her he would kill her or have her killed and that he had made her take the pills so she would sleep until he could return after work to kill her. He left for work two hours later and she called a relative. She was feeling sleepy and called an ambulance. At the emergency room, a responding officer observed red welts on the inner left forearm, a red welt on the left hip area and red discoloration inside the left palm. Fifteen photographs of the injuries were taken, including a photograph of a mark on the forehead. The photographs were not in evidence. An officer arrested respondent and interviewed

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<sup>1</sup> Case number 09M03298.

<sup>2</sup> Penal Code section 273.5, subdivision (a), provides:

Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment.

him. He told the officer that at 10 a.m. that day, he told his wife he wanted to talk to her about divorce. She got loud so he walked away. They did not argue and he did not hit her or get physical in any way. He stated that his wife was trying to make his life miserable and she kept calling the police. He stated that his wife took Seraprim for depression.

5. Respondent continues to maintain that he did not strike his wife with a belt, threaten her or force her to swallow medications. He maintained that his wife fabricated her complaints and he does not know how she sustained her injuries. He testified that he pled nolo contendere in an effort to avoid trial and without understanding the extent of his wife's allegations against him. He testified that his wife made subsequent allegations against him which were dismissed by the District Attorney for lack of evidence.

6. It is well settled that respondent may not attempt to impeach his criminal conviction by claiming that he did not commit the crime for which he was convicted. (*Arneson vs. Fox* (1980) 28 Cal. 3d 440, 449 ["Regardless of the various motives which may have impelled the [no contest] plea, the conviction which was based thereon stands as conclusive evidence of appellant's guilt of the offense charged."] The *Arneson* Court held: "The nolo conviction stands as conclusive proof of appellant's guilt of the specific offense charged in the indictment. No extrinsic independent evidence thereof need be introduced. Nor is appellant permitted to impeach that conviction. (citing *Matanky v. Board of Medical Examiners* 79 Cal.App.3d 293, at p. 302)." *Id* at 452. Consequently, respondent stands convicted of a misdemeanor offense of corporal injury on a spouse and it is proven that he inflicted corporal injury on his spouse on April 5, 2009.

7. However, the fact that respondent was convicted of misdemeanor corporal injury on his spouse does not mean that he was convicted of all of the acts his wife accused him of in her statement in the police report. As noted in *Arneson*, an indictment sets out the specific charge upon which the offense is based. A police report is not an indictment. The admissibility and weight of its contents are governed by *Lake v. Reed* (1997) 16 Cal. 4th 448, 460-461. Under *Lake v. Reed*, the officer's observations of the wife's injuries are direct evidence of bodily injury. The wife's statement is hearsay evidence and can be used only to supplement or explain evidence, but over timely objection, as was made here, shall not be sufficient in itself to support a finding.<sup>3</sup> The wife's hearsay statement, that respondent struck her with a belt, is supported by the direct evidence that the officer observed marks on her body. The wife's hearsay statement that respondent forced her to consume medication and threatened to return and kill her is not supported by any direct evidence. Accordingly, all that can be properly gleaned from the police report is that respondent struck his wife with a belt, inflicting corporal injury upon her.

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<sup>3</sup> Gov. Code, § 11513, subd. (d); *Lake v Reed* (1997) 16 Cal. 4th 448, 458.

8. Pursuant to Business and Professions Code<sup>4</sup> section 4301, subdivision (l), 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 of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. However, this duty of the Board to inquire into the circumstances of the offense does not transform inadmissible hearsay evidence contained in a police report to "circumstances" of the offense. Nor does this duty allow the Board to consider alleged criminal acts for which respondent was not charged and convicted (for instance attempted murder, threats, felony corporal injury on a spouse). In other words, the Board may not treat unproven allegations in a police report as the factual circumstances behind the conviction. To do so would violate respondent's due process rights. Here, the circumstances the Board may inquire into are the elements required for conviction of Penal Code section 273.5, subdivision (a), itself (misdemeanor traumatic corporal injury on a spouse) and those proven at hearing (respondent hit his wife with a belt multiple times).

9. Striking a spouse repeatedly with a belt is an act substantially related to the qualifications, functions and duties of a pharmacy technician. Acts of violence are not compatible with the duty to work safely with the public.

#### *Rehabilitation Evidence*

10. Respondent denied he inflicted corporal injury on his spouse. Thus, his evidence of having completed a batterer's treatment program carried little weight. He submitted in evidence a County of Sacramento Superior Court Minute Order dismissing, on the District Attorney's motion, subsequent charges brought by his wife on December 21, 2009. This Minute Order was clearly introduced to impermissibly impeach respondent's criminal conviction and does not bear upon rehabilitation.

11. Respondent introduced in evidence his Annual Performance Evaluations for 2008 through 2012, at Methodist Hospital. These demonstrate that he "consistently meets and occasionally exceeds position expectations." He also introduced a statement signed by 18 co-workers on August 8, 2010, that speaks at length about respondent's divorce and the behavior of his wife. The obvious intent of this information is to impermissibly impeach respondent's criminal conviction. The statement has some bearing on respondent's risk to the public. It states in pertinent part: "we have been fortunate to work with Charan since June 2006. He is one of the most astounding pharmacy technicians we have worked with. He always shows up to work properly and enthusiastically. He always exceeds expectations and genuinely cares about his work. Charan always goes beyond what is expected of him. [We

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<sup>4</sup> All references are to the California Business and Professions Code, unless otherwise noted.

have] never seen him get angry or lose his cool. He is always trying to please everybody and will help you without reservation.... He is always positive and never lets his personal life affect his work.”

12. Respondent introduced in evidence summaries of interviews with three of respondent’s co-workers. The summaries were prepared in August 2011, by an investigator working for respondent’s attorney. They are signed by the interviewee. In pertinent part, the summaries state that respondent is well-liked at Methodist Hospital and is a well-mannered and soft spoken person. He does not raise his voice or become angry and the interviewees have never seen him act inappropriately.

#### *Imposition of Discipline*

13. The Board has adopted guidelines for determining the appropriate penalty to be imposed in a given case. The guidelines provide that factors such as the following should be considered:

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

14. Respondent lacks a prior disciplinary record, has not harmed or potentially harmed a consumer, has no prior or subsequent criminal record and has complied with the terms and conditions of his probation to date. The offense occurred three and a half years ago and there is no evidence of subsequent violence. Although he denies he was violent with his wife, he completed a batterer’s treatment program and has learned anger management skills in that program. He has worked

competently for over six years for Methodist Hospital and maintains an even and appropriate demeanor with consumers and co-workers.

*Costs*

15. Complainant submitted a Certification of Prosecution Costs stating that the Department of Justice has billed the Board of Pharmacy \$2,210 for the time spent in the investigation and prosecution of this matter. Respondent was invited to challenge these costs or to demonstrate an inability to pay these costs, and did not do so.

LEGAL CONCLUSIONS

1. Section 4300 states in pertinent part:

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

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

[¶...¶]

2. Section 4301 provides in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct .... Unprofessional conduct shall include, but is not limited to, any of the following:

[¶...¶]



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

[¶...¶]

3. As set forth in the Findings, respondent was convicted of a misdemeanor violation of Penal Code section 273.5, subdivision (a), a crime substantially related to the qualifications, functions and duties of a pharmacy technician. Legal cause was established by clear and convincing evidence to revoke respondent's license for unprofessional conduct within the meaning of section 4301, subdivision (l).

4. Respondent was convicted of a crime that suggests he may pose a risk to the public. However, as set forth in Factual Finding 14, it is not contrary to the public interest to place respondent on probation to the Board, on terms and conditions designed to protect the public."

#### *Costs*

5. Section 125.3, subdivision (a), provides in pertinent part:

Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department ... upon request of the entity bringing the proceeding, the administrative law judge may 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.

6. The reasonable costs of enforcement and prosecution of this matter were established as \$2,210, as set forth in Finding 15.

## ORDER

Pharmacy Technician License Number TCH 64051, issued to respondent is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

### 1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

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

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

### 2. Report to the Board

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

### **3. Interview with the Board**

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

### **4. Cooperate with Board Staff**

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

### **5. Notice to Employers**

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4117 (OAH No. 2012010457) and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in case number 4117 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4117 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he has read the decision in case number 4117 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

#### **6. Reimbursement of Board Costs**

As a condition precedent to successful completion of probation, respondent shall pay to the board its costs of investigation and prosecution in the amount of \$2,210. Respondent shall make said payments as follows: \$75 per month. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

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

#### **7. Probation Monitoring Costs**

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

#### **8. Status of License**

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

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

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

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

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

## **10. Notification of a Change in Name, Residence Address, Mailing Address or Employment**

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

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

## **11. Tolling of Probation**

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

Should respondent, regardless of residency, for any reason (including vacation) cease working as a pharmacy technician for a minimum of eighty hours per calendar month in California, respondent must notify the board in writing within ten (10) days of cessation of work and must further notify the board in writing within ten (10) days of

the resumption of the work. Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

## **12. Violation of Probation**

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

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

## **13. Completion of Probation**

Upon written notice by the board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.<sup>5</sup>

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<sup>5</sup> The Board's Guidelines for imposition of discipline seek to impose the following standard term in all probationary orders:

### **Certification Prior to Resuming Work**

Respondent shall be automatically suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202(a)(4) and provides satisfactory proof of

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certification to the board. Respondent shall not resume working as a pharmacy technician until notified by the board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the board.

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

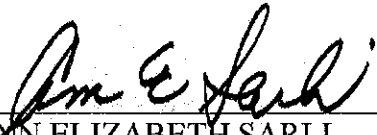
In reference to this term, the Board's Guidelines provide:

In addition, a pharmacy technician would be required to obtain certification as defined by Business and Professions Code section 4202(a)(4) prior to resuming work as a pharmacy technician. The board believes that certification prior to resuming work is always warranted in cases where a pharmacy technician license is disciplined but not revoked.

Pharmacy technicians are issued a license based on minimal education, training requirements or certification. No examination is required for issuance of the registration. Pharmacy technicians are not independent practitioners and must work under the supervision of a pharmacist...

The undersigned elected not to include this condition in the probationary order. Terms and conditions of probation must bear a relationship to the violations proven or to necessary rehabilitation. Respondent did not commit acts which demonstrate impaired technical

Dated: October 10, 2012

  
ANN ELIZABETH SARLI  
Administrative Law Judge  
Office of Administrative Hearings

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skills or which warrant imposition of remedial training or certification. It is in the best interest of the public that all pharmacy technicians obtain more than the minimal training for licensure. But, the Board may not properly use its disciplinary authority to compel the licensee to obtain training and education beyond that statutorily required for licensure.



1 KAMALA D. HARRIS  
Attorney General of California  
2 ARTHUR D. TAGGART  
Supervising Deputy Attorney General  
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7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 4117

13 **CHARAN DASS**  
8221 S. Country Way  
14 Sacramento, CA 95828  
Pharmacy Technician License  
No. TCH 64051

**A C C U S A T I O N**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 20, 2005, the Board of Pharmacy issued Pharmacy Technician  
22 License Number TCH 64051 to Charan Dass (Respondent). The Pharmacy Technician License  
23 was in full force and effect at all times relevant to the charges brought herein and will expire on  
24 July 31, 2013, unless renewed.

25 **JURISDICTION**

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

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4. Section 4300 of the Code states, in pertinent part:

- (a) Every license issued may be suspended or revoked.
- (b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:
  - (1) Suspending judgment.
  - (2) Placing him or her upon probation.
  - (3) Suspending his or her right to practice for a period not exceeding one year.
  - (4) Revoking his or her license.
  - (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

....

5. 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:

....

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the

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

6 . . . .

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

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

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Criminal Conviction)**

16 8. Respondent is subject to disciplinary action under section 4301, subdivision (l) in that  
17 he was convicted of a crime substantially related to the qualifications, functions, and duties of a  
18 licensee as follows:

19 9. On or about August 4, 2009, in the case of *People v. Charan Dass* (Sacramento  
20 Superior Court Case No. 09M03298), Respondent pled nolo contendere to a misdemeanor  
21 violation of Penal Code section 273.5(a) (corporal injury on a spouse). The circumstances are as  
22 follows:

23 10. On April 5, 2009, police officers arrived at Respondent's home, which he shared with  
24 his wife. His wife told the police officers that after an argument, Respondent forced 5 to 7 pills  
25 into her mouth and made her swallow them. Respondent hit her with a belt approximately 8 to 10  
26 times. Respondent told her repeatedly that he would kill her or have her killed, and that he made  
27 her take the pills so she would sleep until he returned from work, at which time he would kill her.

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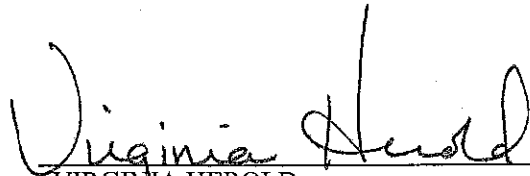
PRAYER

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 License Number TCH 64051, issued to Charan Dass.;
2. Ordering Charan Dass 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: \_\_\_\_\_

11/9/11



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

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