

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

In the Matter of the Accusation Against:

Case No. 4321

**JASON ALEXANDER DURDEN**  
1829 W 38<sup>th</sup> Street  
Los Angeles, CA 90062

OAH No. 2014010881

Pharmacy Technician Registration  
No. TCH 97362

Respondent.

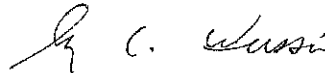
**DECISION AND ORDER**

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 September 12, 2014.

It is so ORDERED on August 20, 2014.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

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STAN C. WEISSER  
Board President

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**PROPOSED DECISION**

This matter came on regularly for hearing before Carla L. Garrett, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, in Los Angeles, California.

Cristina Felix, Deputy Attorney General, represented Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs (Complainant). Respondent Jason Alexander Durden (Respondent) appeared at the hearing and represented himself.

At the hearing, the Accusation was amended at paragraph 11(a) to include the following sentence at line 25: "On October 21, 2013, Respondent's conviction was reduced to a misdemeanor." In addition, the paragraph enumerated "13" on page 7, line 6, was changed to "14," and the first sentence of that paragraph was amended to state, "On or about October 1, 2003, Respondent was convicted of one misdemeanor count of violating Penal Code section 487, subdivision (a) [grand theft: money/labor/property] and one misdemeanor count of burglary under Penal Code section 459, subdivision (a), in the criminal case entitled *The People of the State of California v. Jason Durden* (Super. Ct. Los Angeles County, 2003, No. 03HF1138)."

Oral and documentary evidence was received, the record was closed, and the matter was submitted for decision on June 17, 2014.

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## FACTUAL FINDINGS

1. On January 27, 2014, Complainant issued Accusation 4321 against Respondent in her official capacity as Executive Officer of the Board of Pharmacy (the Board). Respondent filed a request for a hearing.

2. On June 30, 2010, the Board issued Pharmacy Technician Registration No. TCH 97362 to Respondent. The registration was in full force and effect at all relevant times and expired on June 30, 2014. The registration has not been renewed. Business and Professions Code section 118, subdivision (b), provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

### *Convictions*

3. On January 13, 2012, in the Superior Court of California, County of Los Angeles, in Case No. BA392493, pursuant to a guilty plea, Respondent sustained a conviction for carrying a loaded firearm in public, in violation of Penal Code section 25850, subdivision (a), a felony substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

4. The facts and circumstances underlying the conviction concerned a nine-milometer handgun Respondent had received from his grandfather years prior. On or about January 4, 2012, Respondent, who was suffering a financial crisis, decided he would pawn the gun. Respondent placed the firearm in his backpack and then began walking to the pawn shop. On his way, the police stopped Respondent. According to Respondent, the police asked him if he had heard any gunshots, to which Respondent replied in the negative. The police also asked if he was affiliated with any gangs, to which he replied in the negative. The police then searched Respondent's backpack and discovered the gun. According to Respondent, the gun was not loaded and no bullets were in the chamber. The police arrested Respondent.

5. Respondent's version differed from that of the police officers. According to the arrest report, the officers observed Respondent walking quickly on a street near a recent shooting, while looking nervously left to right and over his shoulder. When the officers approached him in their vehicle, Respondent stopped walking, looked startled, and then began walking backwards. Respondent immediately stated, "I didn't do anything. Please, I didn't do anything." Respondent then slipped off his backpack and began running. The officers caught Respondent. Respondent stated, "I'm sorry sir, that's not mine." The officers searched the backpack and discovered a blue steel semi-automatic pistol loaded with eight live nine-milometer rounds inside the chamber. The officers subsequently learned the gun was not registered to Respondent, and had been reported stolen nearly three years prior, on July 8, 2009.

6. Respondent entered into a plea agreement and the court ordered him to complete 600 hours of CalTrans service by the probation and sentencing hearing. On

October 21, 2013, at his probation and sentencing hearing, Respondent submitted proof of his compliance. The court then reduced Respondent's felony to a misdemeanor and placed Respondent on summary probation for a period of three years. The court initially ordered Respondent to pay fines, fees, and assessments, but then ordered the stay of all fines and fees.

7. On December 11, 2009, in the Superior Court of California, County of Los Angeles, in Case No. 9CA26028, pursuant to a plea of nolo contendere, Respondent sustained a conviction for trespass, in violation of Penal Code section 602, subdivision (m), a misdemeanor substantially related to the qualifications, functions, and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.

8. The facts and circumstances underlying the conviction concerned Respondent's relationship with his girlfriend. Specifically, according to Respondent, he and his girlfriend, who was pregnant with his child, had gotten into an argument at her mother's house. According to Respondent, although there was no violence involved, her mother called the police. When the police officers arrived, they told Respondent to leave, which he did. Approximately one week later, Respondent received a restraining order in the mail. Thereafter, his girlfriend moved out of her mother's home, and began living with a friend of hers in Compton. His girlfriend delivered the baby, which prompted Respondent to come to the Compton home and spend time with her and their newborn daughter. His girlfriend consented. However, on one occasion when her mother had come to the Compton home for a visit, she saw Respondent there. Her mother took a picture of Respondent's car parked in front of the Compton home, and then gave it to the District Attorney's office. Respondent was arrested.

9. Respondent's account concerning the initial dispute between he and his girlfriend differed from that of the investigation report prepared by the Los Angeles Police Department. According to the report, on April 15, 2009, Respondent and his girlfriend were sitting in his vehicle, and had gotten into an argument. Respondent had become enraged and struck his girlfriend several times with a closed fist on her face and body, until his girlfriend escaped from the vehicle. A family member of the girlfriend had spotted her walking down the street. The girlfriend had visible marks on her face, which prompted the family member to transport the girlfriend to the police station to file a complaint and report her injuries. This version is more persuasive, as the police officers had no reason to fabricate what occurred.

10. The court placed Respondent on probation for a period of 36 months under various terms and conditions including the enrollment and completion of 52 weeks of domestic violence counseling sessions, and the payment of \$950 in fines, fees, restitution, and assessments. Respondent completed the 52 weeks of domestic violence counseling sessions, but has not finished paying all of the fines and restitution.

11. On January 4, 2009, in the Superior Court of California, County of Los Angeles, in Case No. 8CA09549, pursuant to a plea of nolo contendere, Respondent sustained a conviction for driving without a valid driver's license, in violation of Vehicle Code section 12500, subdivision (a), a misdemeanor.

12. The facts and circumstances underlying the conviction occurred on June 7, 2008, five days after Respondent's June 2nd birthday, when he was driving to his grandfather's house to watch a Lakers game. Respondent's driver's license had expired on his birthday. For reasons unknown to Respondent, the police stopped Respondent's car.<sup>1</sup> When Respondent asked why they stopped him, the officers told him to get out of his car and they would tell him. Respondent complied. Instead of telling Respondent why they had stopped him, the officers told Respondent to put his hands behind his back. When Respondent questioned why, one of the officers tried to grab him while the other officer hit him. The officers threw Respondent to the ground. During the scuffle, one of the officers injured his fingernail. The officers arrested Respondent for injuring an officer and resisting arrest. The District Attorney's office filed a criminal complaint against Respondent for injuring an officer, resisting arrest, and for driving without a valid driver's license. Respondent fought the charges for approximately a year. The District Attorney's office ultimately dropped the charges for resisting arrest and causing injury to an officer, and only pursued the charge related to Respondent driving without a valid driver's license. At hearing, Respondent explained that at the time of his arrest, he had forgotten his license had expired just days earlier. Consequently, he pled *nolo contendere* to driving without a valid driver's license.

13. The court placed Respondent on probation for a period of 24 months under various terms and conditions, including serving a one-day jail sentence with credit for one day served, and the payment of fees, fines, and assessments.

#### *Reporting Convictions*

14. On or about April 17, 2009, Respondent completed an application for registration as a pharmacy technician, and submitted it to the Board on or about October 20, 2009. In his application, Respondent responded in the affirmative when asked whether he had been convicted of a crime. Respondent attached to his application a written explanation of a misdemeanor conviction he sustained on October 1, 2003 of grand theft.<sup>2</sup> The Board issued a pharmacy technician registration on June 30, 2010.

15. After completing his application on April 17, 2009, but before submitting it on October 20, 2009, Respondent suffered a conviction on June 4, 2009, as set forth in Factual Findings 7 through 10. After submitting his application on October 20, 2009, but before the Board had issued his registration on June 30, 2010, Respondent sustained a conviction on December 11, 2009 as set forth in Factual Findings 7 through 10. Respondent did not advise the Board of the June 4, 2009 and December 11, 2009 convictions.

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<sup>1</sup> At the hearing, Respondent learned from Ms. Felix that the officers had stopped him, according to the police report, because he did not have a rearview mirror. This surprised Respondent because no one had ever explained to him why the officers had stopped him, and because his car did, in fact, have a rearview mirror.

<sup>2</sup> See Factual Findings 17 through 19 below.

16. On June 28, 2012, in his renewal application to the Board, Respondent answered in the negative to the following question: "Since you last renewed your license, have you had any license disciplined by a governmental agency or other body, or have you been convicted of any crime in any state, the USA, military court or a foreign county?" Respondent's answer was untrue, as he had been convicted of a crime (i.e., carrying a loaded firearm in public) on January 13, 2012, five months prior to submitting his renewal application, as set forth in Factual Findings 3 through 6. Respondent did not advise the Board of his January 13, 2012 conviction.

#### *Aggravating Circumstances*

17. On October 1, 2003, in the Superior Court of California, County of Los Angeles, in Case No. 03HF1138, pursuant to a guilty plea, Respondent sustained a conviction for grand theft (money, labor, or property), in violation of Penal Code section 487, subdivision (a), a misdemeanor.

18. The facts and circumstances underlying the conviction involved Respondent and three of his cousins, when, on July 25, 2003, they entered a Target store, cut open packaged phones, and placed the phones in a diaper bag. Target's security team stopped Respondent and his cousins as they exited Target. At hearing, Respondent testified he did not take anything, but admitted that, at one time, he held the diaper bag that held the phones, as well as other items taken from Target, such as cell phone battery packs, chargers, "D" batteries, and two compact discs. The police arrested Respondent and his cousins.

19. The court placed Respondent on informal probation for a period of three years under various terms and conditions, including serving a 30-day jail sentence and completing 30 hours of CalTrans service.

#### *Mitigating Circumstances / Rehabilitation*

20. Prior to 2003, Respondent had no arrest record. While he was not proud of suffering any convictions in 2003 and 2009, Respondent acknowledged that those convictions helped changed his perspective on life in a positive way. Consequently, after his 2009 conviction and the birth of his daughter in the same year, he set out to become a better man. In that regard, he enrolled in American Career College (ACC) to study to become a pharmacy technician. At ACC, he maintained an "A" average and received awards for maintaining perfect attendance.

21. In addition, in 2009, Respondent became a mason at The Most Worshipful Saint Joseph Grand Lodge, an organization that gave its members the tools to build their spiritual temples, to "knock off the rough edges," and to help "make good men better." (Respondent's testimony.) In that regard, the organization taught its members how to control anger, and to use their energy in a positive direction. As a mason, Respondent was, and continues to be, very active and highly involved in his community.

22. In 2012, Respondent had become desperate for money, and believed pawning his gun would be a good way to make some fast cash. Although he disputes that the gun was loaded, he understands he should not have been walking around with a gun without the proper paperwork showing he was permitted to carry a firearm.

23. Respondent attends Redemption Baptist Church where he is a chairman, and is responsible for the church's finances and records. Also, for the past six years, he has served as a speaker at various churches, where he talks to young adults between the ages of 18 and 29 about remaining on a positive course.

24. In his testimony, Respondent demonstrated maturity, contrition, and remorse for his past actions, even in those instances his version of events differed from the police officers'. He convincingly established an absolute desire to continue on his path of redemption, and would like to maintain his pharmacy technician registration so that he can fully provide support for his family.

25. Respondent submitted a number of character letters from masonic brothers, church members, and friends, including one from his former girlfriend who was the subject of the restraining order. All of those who wrote character letters on Respondent's behalf were aware of Respondent's prior convictions. Irrespective of his past, the letters lauded Respondent as responsible, honest, professional, hardworking, and a good role model.

#### *Costs of Prosecution*

26. The Board incurred costs of investigation and prosecution in the amount of \$5,777.50. These costs are reasonable pursuant to Business and Professions Code section 125.3. Respondent is currently unemployed, and picks up odd jobs from time to time by working with his father or performing tax preparation services.

### LEGAL CONCLUSIONS

Respondent's registration shall be revoked as discussed in more detail below:

1. In this proceeding based on an Accusation, the burden of proof is on Complainant to establish alleged violations by "clear and convincing proof to a reasonable certainty." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) This means the burden rests on Complainant to establish the charging allegations by proof that is clear, explicit and unequivocal—so clear as to leave no substantial doubt, and sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re Marriage of Weaver* (1990) 224 Cal.App.3d 478.)

2. Under Business and Professions Code section 4300, subdivision (a), the Board may suspend or revoke a license or registration.<sup>3</sup>

3. Under Code section 490, the Board may revoke or suspend a registration for conviction of a crime substantially related to the qualifications, functions, and duties of a licensee.”

4. Code section 4301 states, in pertinent part, that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, which includes:

“(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

“(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

¶ . . . ¶

“(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of 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.”

5. Under Regulation 1770, a crime “shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions

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<sup>3</sup> All statutory references are to the Business and Professions Code except where noted.



authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

6. Cause exists to discipline Respondent’s registration as a pharmacy technician pursuant to Code sections 4301, subdivision (l), and 490, in conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of a pharmacy technician, as set forth in Factual Findings 3 through 10.

7. Cause exists to discipline Respondent’s registration as a pharmacy technician under Code section 4301, subdivision (f), in Respondent’s conviction, specifically the underlying facts supporting the issuance of a restraining order against Respondent, which he subsequently violated, involved an act or moral turpitude, as set forth in Factual Findings 7 through 10.

8. Cause exists to discipline Respondent’s registration as a pharmacy technician under Code section 4301, subdivision (g), in that Respondent knowingly made a false statement of fact to the Board on his renewal application by denying he had sustained any convictions, as set forth in Factual Finding 16.

9. A determination that cause exists to suspend or revoke respondent’s pharmacy technician registration does not end the inquiry. Such cause may be overcome with substantial, persuasive evidence of rehabilitation and good character. The Board has compiled a list of factors to evaluate whether a licensee has been rehabilitated from prior misconduct. That list, found in *A Manual of Disciplinary Guidelines and Model Disciplinary Orders* (Revised 10/2007), and which is incorporated by reference into the Board’s regulations,<sup>4</sup> includes the nature and severity of the act under consideration; the actual or potential harm to any consumer or to the public; a licensee’s prior disciplinary record; aggravating evidence; rehabilitation evidence; the licensee’s compliance with the terms of any sentence, probation, or parole; the time that has elapsed since commission of the act; and evidence of dismissal of any conviction under Penal Code section 1203.4.

10. Here, while Respondent has demonstrated substantial rehabilitation, particularly between the periods of 2009 and 2012, and specifically as it related to his education, masonic activities, and community involvement, his rehabilitation does not outweigh the gravity of his actions in 2012 when he knowingly made a false statement to the Board (i.e., a misrepresentation on his renewal application), in an apparent effort to prevent the Board from learning of his conviction.

11. In *Golde v. Fox* (1979) 98 Cal.App.3d 167, the court stated:

The crime here, of course, does not relate to the technical or mechanical qualifications of a real estate licensee, but there is more to being a licensed

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<sup>4</sup> Cal. Code Regs., tit 16, § 1760.

professional than mere knowledge and ability. Honesty and integrity are deeply and daily involved in various aspects of the practice. (*Id.* At 176.)

12. Given the above, Respondent's registration shall be revoked.

*Costs*

13. Under section 125.3, the Board may request the administrative law judge to direct a licentiate found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. These reasonable costs are \$5,777.50, as set forth in Factual Finding 26.

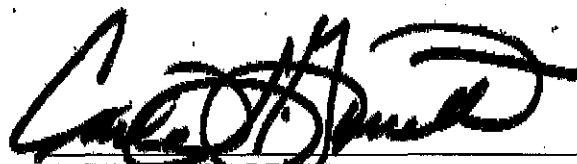
14. Under *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.App.4th 32, 45, the Board must exercise its discretion to reduce or eliminate cost awards so as to prevent cost award statutes from deterring licensees with potentially meritorious claims or defenses from exercising their right to a hearing. "Thus the [Board] may not assess the full costs of investigation and prosecution when to do so will unfairly penalize a [licensee] who has committed some misconduct, but who has used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed." (*Id.*) The Board, in imposing costs in such situations, must consider the licensee's subjective good faith belief in the merits of his or her position and the Board must consider whether or not the licensee has raised a colorable defense. The Board must also consider the licensee's ability to make payment. Here, despite the fact the cost bill is reasonable, Respondent is unemployed and cannot afford to pay a cost bill of nearly \$5,800.

15. Considering all the *Zuckerman* factors, Respondent shall pay the Board its reasonable costs in the amount of \$5,777.50 as a condition precedent to reinstatement of his revoked registration.

ORDER

1. Respondent's registration as a pharmacy technician is revoked.
2. Respondent shall pay to the Board its reasonable costs in the amount of \$5,777.50 as a condition precedent to reinstatement of his revoked registration.

DATED: July 17, 2014



CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings

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

10 In the Matter of the Accusation Against:

Case No. 4321

11 **JASON ALEXANDER DURDEN**  
1829 W. 38th Street  
12 Los Angeles, CA 90062

**ACCUSATION**

13 Pharmacy Technician Registration No. TCH  
97362

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

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

19 2. On or about June 30, 2010, the Board of Pharmacy (Board) issued Pharmacy  
20 Technician Registration No. TCH 97362 to Jason Alexander Durden (Respondent). The  
21 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges  
22 brought herein and will expire on June 30, 2014, unless renewed.

23 **JURISDICTION**

24 3. This Accusation is brought before the Board under the authority of the following  
25 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 **STATUTORY PROVISIONS**

2 4. Section 490 states, in pertinent part:

3 (a) In addition to any other action that a board is permitted to take  
4 against a licensee, a board may suspend or revoke a license on the ground that the  
5 licensee has been convicted of a crime, if the crime is substantially related to the  
6 qualifications, functions, or duties of the business or profession for which the license  
7 was issued.”

8 (b) Notwithstanding any other provision of law, a board may exercise  
9 any authority to discipline a licensee for conviction of a crime that is independent of  
10 the authority granted under subdivision (a) only if the crime is substantially related to  
11 the qualifications, functions, or duties of the business or profession for which the  
12 licensee's license was issued.”

13 (c) A conviction within the meaning of this section means a plea or  
14 verdict of guilty or a conviction following a plea of nolo contendere. Any action that  
15 a board is permitted to take following the establishment of a conviction may be taken  
16 when the time for appeal has elapsed, or the judgment of conviction has been  
17 affirmed on appeal, or when an order granting probation is made suspending the  
18 imposition of sentence, irrespective of a subsequent order under the provisions of  
19 Section 1203.4 of the Penal Code.”

20 5. Section 493 states:

21 Notwithstanding any other provision of law, in a proceeding conducted  
22 by a board within the department pursuant to law to deny an application for a license  
23 or to suspend or revoke a license or otherwise take disciplinary action against a  
24 person who holds a license, upon the ground that the applicant or the licensee has  
25 been convicted of a crime substantially related to the qualifications, functions, and  
26 duties of the licensee in question, the record of conviction of the crime shall be  
27 conclusive evidence of the fact that the conviction occurred, but only of that fact, and  
28 the board may inquire into the circumstances surrounding the commission of the  
crime in order to fix the degree of discipline or to determine if the conviction is  
substantially related to the qualifications, functions, and duties of the licensee in  
question. "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,'  
and 'registration.'

6. Section 4300 provides in pertinent part, that every license issued by the Board is  
subject to discipline, including suspension or revocation.

7. Section 4300.1 states:

The expiration, cancellation, forfeiture, or suspension of a board-issued  
license by operation of law or by order or decision of the board or a court of law, the  
placement of a license on a retired status, or the voluntary surrender of a license by a  
licensee shall not deprive the board of jurisdiction to commence or proceed with any  
investigation of, or action or disciplinary proceeding against, the licensee or to render  
a decision suspending or revoking the license.

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8. Section 4301 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:

....

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

....

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of 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.

REGULATORY PROVISIONS

9. California Code of Regulations, title 16, section 1770 states, in pertinent part:

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

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1 COST RECOVERY

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

6 FIRST CAUSE FOR DISCIPLINE

7 (Convictions of Substantially Related Crimes)

8 11. Respondent is subject to disciplinary action under sections 4301, subdivision (l) and  
9 490, in conjunction with California Code of Regulations, title 16, section 1770, in that  
10 Respondent has been convicted of crimes substantially related to the qualifications, functions or  
11 duties of a pharmacy technician, as follows:

12 a. On or about January 13, 2012, after pleading guilty, Respondent was convicted of one  
13 felony count of violating Penal Code section 25850, subdivision (a) [carrying a loaded firearm in  
14 public] in the criminal case entitled *The People of the State of California v. Jason Durden* (Super.  
15 Ct. Los Angeles County, 2012, No. BA392493). The circumstances surrounding the conviction  
16 are that on or about January 4, 2012, Respondent was observed walking on a street near a recent  
17 shooting with a quick pace and nervously looking left to right and backwards over his shoulder.  
18 Respondent looked at the officer's approaching vehicle, stopped walking, and began walking  
19 backwards, with a startled expression. Respondent immediately stated, "I didn't do anything,  
20 Please I didn't do anything." Respondent immediately slipped out of a back-pack that he was  
21 carrying and started running. Respondent was taken down by two police officers and taken into  
22 custody. Respondent stated, "I'm sorry sir, that's not mine." During a search of Respondent's  
23 back-pack, the officers located a blue steel semi-automatic pistol loaded with eight live 9mm  
24 rounds inside the chamber. The firearm was not registered to Respondent and was reported stolen  
25 on July 8, 2009.

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1           b.    On or about December 11, 2009, after pleading nolo contendere, Respondent was  
2 convicted of one misdemeanor count of violating Penal Code section 602, subdivision (m)  
3 [trespass: occupying property without consent], in the criminal case entitled *The People of the*  
4 *State of California v. Jason Durden* (Super. Ct. Los Angeles County, 2009, No. 9CA26028). The  
5 Court placed Respondent on 36 months probation and ordered him to pay fines and restitution.  
6 The circumstances surrounding the conviction are that on or about April 15, 2009, Respondent  
7 had an altercation with the victim, his girlfriend, who was 4 months pregnant with his child and  
8 who had been dating Respondent for approximately 1 year. While sitting in Respondent's  
9 vehicle, Respondent and the victim had a verbal argument that became physical. Respondent  
10 became enraged and struck the victim several times with a closed fist on her body and face, until  
11 ~~the victim was able to get out of the vehicle. The victim was found by a family member while~~  
12 walking down the street and the family member transported the victim to the police station to file  
13 a complaint and report her injuries.

14           c.    On or about June 4, 2009, after pleading nolo contendere, Respondent was convicted  
15 of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a) [driving  
16 without a valid driver's license] in the criminal case entitled *The People of the State of California*  
17 *v. Jason Durden* (Super. Ct. Los Angeles County, 2009, No. 8CA09549). The Court sentenced  
18 Respondent to serve 1 day in Los Angeles County Jail and placed him on 24 months probation,  
19 with terms and conditions. The circumstances surrounding the conviction are that on or about  
20 ~~June 7, 2008, during a traffic stop by the Los Angeles Police Department, Respondent was~~  
21 contacted. When asked for his driver's license and insurance information, Respondent refused to  
22 produce the requested information and stated, "I ain't giving you s...t," in violation of Vehicle  
23 Code section 12951, subdivision (b) [refusal to present identification to officer]. When the  
24 officers attempted to arrest Respondent, Respondent refused to cooperate with the officer's  
25 commands, a struggle ensued, and Respondent had to be taken down by two police officers.  
26 During the struggle with Respondent, one of the officer's had the top portion of his finger nail  
27 from his little finger torn off. Respondent was subsequently arrested for violating Penal Code  
28 section 69 [resisting arrest]. During a warrant check of Respondent's name, it was revealed that

1 Respondent had a \$1,000 warrant for his arrest and did not have a current driver's license, in  
2 violation of Vehicle Code section 14601.2, subdivision (a) [driving while driving privilege is  
3 suspended or revoked].

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Acts Involving Moral Turpitude, Dishonesty, Fraud or Deceit)**

6 12. Respondent is subject to disciplinary action under sections 4301, subdivision (f) and  
7 in that Respondent committed acts involving moral turpitude, dishonesty, fraud or deceit.  
8 Complainant refers to, and by this reference incorporates, the allegations set forth above in  
9 paragraph 11, subparagraphs (a) through (c), inclusive, as though set forth fully.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Knowingly Made a False Statement of Fact to Licensing Authority)**

12 13. Respondent is subject to disciplinary action under sections 4301, subdivision (g), in  
13 that Respondent knowingly made a false statement of fact to the Board by failing to disclose  
14 conviction cases against him on his renewal application for licensure. The circumstances are as  
15 follows:

16 a. On June 28, 2012, in his Pharmacy Technician renewal application to the Board,  
17 Respondent answered "no" to the following question: "Since you last renewed your license, have  
18 you had any license disciplined by a governmental agency or other body, or, have you been  
19 convicted of any crime in any state, the USA, military court or a foreign country?" However, on  
20 or about January 13, 2012, after pleading guilty, Respondent was convicted of one felony count  
21 of violating Penal Code section 25850, subdivision (a) [carrying a loaded firearm in public] in the  
22 criminal case entitled *The People of the State of California v. Jason Durden* (Super. Ct. Los  
23 Angeles County, 2012, No. BA392493). Also, on or about December 11, 2009, after pleading  
24 nolo contendere, Respondent was convicted of one misdemeanor count of violating Penal Code  
25 section 602, subdivision (m) [trespass: occupying property without consent], in the criminal case  
26 entitled *The People of the State of California v. Jason Durden* (Super. Ct. Los Angeles County,  
27 2009, No. 9CA26028). In addition, on or about June 4, 2009, after pleading nolo contendere,  
28 Respondent was convicted of one misdemeanor count of violating Vehicle Code section 12500,



1 subdivision (a) [driving without a valid driver's license] in the criminal case entitled *The People*  
2 *of the State of California v. Jason Durden* (Super. Ct. Los Angeles County, 2009, No.  
3 8CA09549). Complainant refers to, and by this reference incorporates, the allegations set forth  
4 above in paragraph 11, subparagraphs (a), (b) and (c), inclusive, as though set forth fully.

5 **DISCIPLINARY CONSIDERATIONS**

6 13. On or about October 1, 2003, Respondent was convicted of one misdemeanor count  
7 of violating Penal Code section 487, subdivision (a) [grand theft: money/labor/property], in the  
8 criminal case entitled *The People of the State of California v. Jason Durden* (Super. Ct. Los  
9 Angeles County, 2003, No. 03HF1138). The Court placed Respondent on 3 years probation, with  
10 terms and conditions. The circumstances surrounding the conviction are that on or about July 25,  
11 2003, Respondent entered a Target with three other suspects and removed items from the Target  
12 while security watched, including by cutting open packaged phones and placing the phones in a  
13 diaper bag. Security called the police officers and Respondent and three other suspects were  
14 stopped for questioning by the police officers when they exited the Target. When Respondent  
15 was searched, he was found in possession of a diaper bag containing two cell phones and multiple  
16 cell phone battery packs wrapped in a t-shirt, two cell phones and chargers hidden underneath  
17 diaper wipes inside a Huggies diaper wipes box. The diaper bag in Respondent's possession also  
18 contained air fresheners, a four pack of "D" batteries, and two compact discs. The items in  
19 Respondent's possession had been taken from the Target. A black box cutter was also found in  
20 Respondent's possession.

21 **PRAYER**

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

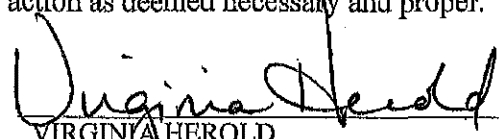
- 24 1. Revoking or suspending Pharmacy Technician Registration No. TCH 97362, issued  
25 to Jason Alexander Durden;
- 26 2. Ordering Jason Alexander Durden to pay the Board the reasonable costs of the  
27 investigation and enforcement of this case, pursuant to section 125.3; and

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

DATED: 10/21/13



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

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