

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

In the Matter of the Accusation Against:

JARED EVAN BROOKS

994 Harliss Ave., #1
San Jose, CA 95110

Pharmacy Technician Registration
No. TCH 97122

Respondent.

Case No. 4585

OAH No. 2014060419

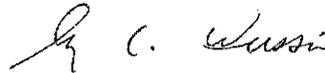
DECISION AND ORDER

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 November 7, 2014.

It is so ORDERED on October 8, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter on August 18, 2014, in Oakland, California.

Deputy Attorney General Maretta Ward represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

There was no appearance by or on behalf of respondent Jared Evans Brooks.

The record closed and the matter was submitted on August 18, 2014.

FACTUAL FINDINGS

1. On January 21, 2010, the Board of Pharmacy (board) issued Pharmacy Technician Registration Number TCH 97122 to respondent Jared Evans Brooks. The registration was in full force and effect at all times relevant to the matters alleged in the accusation and will expire on January 31, 2016, unless renewed.

2. On February 18, 2014, complainant Virginia K. Herold, acting in her official capacity as Executive Director of the board, issued the accusation against respondent. The accusation alleges that respondent has been convicted of a crime substantially related to the qualifications, functions and duties of a pharmacy technician. Respondent filed a notice of defense and this hearing followed.

3. Respondent was properly served with the Accusation and Notice of Hearing, pursuant to Government Code sections 11505 and 11509. As no appearance was made by or

on behalf of respondent, this hearing proceeded by default pursuant to Government Code section 11520.

4. On June 18, 2012, in Santa Clara Superior Court, respondent was convicted on his plea of nolo contendere of a violation of Health and Safety Code section 11357, subdivision (c) (possession of more than 28.5 grams of marijuana), a misdemeanor and a crime substantially related to the qualifications, functions and duties of a pharmacy technician pursuant to California Code of Regulations, title 16, section 1770.¹ Respondent admitted that the crime was subject to a penalty enhancement under Penal Code section 12022, subdivision (a)(1), which applies to a person who is armed with a firearm in the commission of a felony. Imposition of sentence was suspended and respondent was placed on formal probation for three years on conditions that he serve 180 days in jail, pays fines and fees, not possess any deadly weapons, and attend a substance abuse treatment program.

5. The facts and circumstances leading to this conviction are that, on January 20, 2012, San Jose police officers executed a search warrant at the home that respondent shared with another tenant. Respondent refused to open his bedroom door, and the police forced it open. Respondent had armed himself with a handgun when he heard noises outside his bedroom, but put it down when he heard that it was the police who had entered the home. Respondent estimated that he had about two ounces of marijuana in his bedroom and that he smoked about seven ounces per month. Respondent told the police that he once had a medical marijuana card, but that it had expired. In respondent's bedroom, police officers found about seven ounces of marijuana, and also found "hash" marijuana. Respondent was in possession of \$450 in cash. Respondent told the police officers that he had the handgun for "home protection."

The other tenant of the house was found to be in possession of controlled substances and over \$4,000 in cash; he was also arrested. In that tenant's bedroom, the police found plastic baggies and digital scales.

6. Respondent is 33 years old. He has no history of prior license discipline.

7. It appears from documents that respondent submitted to the board before the hearing that he has been compliant with all of the terms of his criminal probation. On March 7, 2013, respondent successfully completed the substance abuse treatment program. In a treatment status report bearing the same date, Leslie Cook, LMFT, writes that respondent was "very engaged with his treatment," that he has addressed his treatment goals, and that he feels he has "learned information and coping skills that he can use to not only prevent relapse but to deal with life stressors." Cook goes on to write that respondent has graduated from treatment with no further referrals for service.

¹ Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d).

Janice Gillies, a Programs Rehabilitation Officer for the Santa Clara County Sheriff's Office, writes that respondent successfully completed all phases of the Regimented Corrections Program. In her report written sometime after September 18, 2012, Gillies states that respondent has been an excellent participant in the program, that he has a good attitude, and that felt his jail experience was "eye opening" and had taught him patience and how to interact with others. Respondent told Gillies that if he could not return to his former work with a health care plan, he would consider a career change. Gillies feels that respondent has great potential to become a productive citizen.

8. In an undated letter to complainant's counsel, respondent writes that "[m]ore than anything I just want to go back to work and become a contributing part of the community again, I'm tire of being an unemployment statistic and feeling horrible about myself and any mistakes I made in the past." Attached to respondent's letter is a docket sheet from Santa Clara County Superior Court. The date of the document is difficult to read: it appears to be either "02/03/2013" or "12/03/2013." The document states that, on that date, respondent's conviction was dismissed pursuant to Penal Code section 1203.4; this suggests that respondent's probation was terminated early.

9. In the accusation, complainant prays to recover the agency's costs of investigation and enforcement, but no evidence of the agency's costs was presented.

LEGAL CONCLUSIONS

First cause for discipline

1. The board may take disciplinary action against a pharmacy technician registration if the licensee has committed "unprofessional conduct." (Bus. & Prof. Code, § 4301.²) The term "unprofessional conduct" includes the conviction of a crime that is substantially related to the qualifications, functions and duties of a technician. (§ 4301, subd. (1).) Section 490 also authorizes the board to suspend or revoke a registration if the licensee has been convicted of a crime that is substantially related to the qualifications, functions or duties of the licensed activity. Cause exists under these provisions to take disciplinary action against respondent's registration, by reason of the matters set forth in Findings 4 and 5.

Second cause for discipline

2. The term "unprofessional conduct" includes the "the violation of any statute of this state . . . regulating controlled substances and dangerous drugs." (§ 4301, subd. (j).) Respondent violated Health and Safety Code section 11357, subdivision (c), and he violated section 4060, which prohibits the possession of any controlled substance unless it has been

² All statutory references are to the Business and Professions Code, unless otherwise noted.

lawfully prescribed. Cause exists under section 4301, subdivision (j), to take disciplinary action against respondent's registration by reason of the matters set forth in Findings 4 and 5.

Third cause for discipline

3. The term "unprofessional conduct" includes the self-administration of any controlled substance "to the extent or in a manner as to be dangerous or injurious to oneself . . . or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license." (§ 4301, subd. (h).) It is plain that respondent self-administered a controlled substance, as he admitted to the police that he regularly used marijuana. Whether he did so in a manner that was dangerous or injurious to himself or others, however, or to the extent that it impaired his ability to safely perform his duties as a pharmacy technician, was not established. No cause exists to take disciplinary action against respondent pursuant to subdivision (h) of section 4301.

4. In the third cause for discipline, complainant alleges that cause for discipline for self-administration exists under section 4301, subdivision (j), but does not identify the statute that respondent is alleged to have violated by self-administering a controlled substance, other than section 4301, subdivision (h). No cause exists to take disciplinary action against respondent pursuant to section 4301, subdivision (j), except as set forth in Legal Conclusion 2.

5. In the third cause for discipline, complainant alleges that cause for discipline for self-administration exists under Health and Safety Code section 11350, but that section concerns possession of a controlled substance, not self-administration. No cause exists to take disciplinary action against respondent pursuant to Health and Safety Code section 11350.

Fourth cause for discipline

6. Section 4301 provides that the board may take disciplinary action against a pharmacy technician who is "guilty of unprofessional conduct." It states that "[u]nprofessional conduct shall include, but is not limited to, any of the following . . ." The section then goes on to list numerous subdivisions that define particular instances of "unprofessional conduct," including subdivisions (h), (j) and (l), addressed above.

In the fourth cause for discipline, the accusation alleges that respondent engaged in unprofessional conduct "under section 4301." No evidence or argument was offered as to how respondent's conduct was unprofessional, other than as alleged above. No cause exists to take disciplinary action against respondent for unprofessional conduct, except as set forth in Legal Conclusions 1 and 2, above.

Disciplinary considerations

7. It is respondent's burden to demonstrate that he is sufficiently rehabilitated from his criminal offenses so that it would not be contrary to the public interest to allow him to retain his pharmacy technician registration. The board has published disciplinary guidelines to assist in evaluating a licensee's rehabilitation. Among the factors the board considers are the licensee's overall criminal record; the nature and severity of his offense; whether the licensee complied with the terms of his criminal sentence; the time that has passed since the offenses; and whether the licensee's conviction has been dismissed. The board places great weight on recent, dated statements from a licensee's supervisors, who know him and can speak to the strength of his rehabilitation.

Although respondent did not appear at hearing to present evidence of rehabilitation, the documents he submitted to the department reveal that rehabilitation has begun. Respondent actively participated in substance abuse treatment, he has complied with the terms of his probation, and it appears that he has changed his attitude toward the use of marijuana. All of this is to respondent's credit. In addition, this is respondent's only criminal offense. Evidence of rehabilitation, however, must be measured against the seriousness of the crime; the more serious the crime, the stronger the showing of rehabilitation must be. For a pharmacy technician, who may have access to controlled substances in the course of his duties, a crime involving controlled substances while in possession of a firearm is a particularly serious offense. A compelling showing of rehabilitation is required, and respondent has not made such a showing. Respondent committed the offense less than three years ago. At best, he has been off probation for less than two years. The circumstances surrounding respondent's arrest are troubling, and have not been addressed. Whether respondent still associates with the same people today as he did in 2012 is not known. Whether respondent now abstains from the use of controlled substances and, if he does, the strength of his recovery, are also unknown. It would be contrary to the public interest to allow respondent to retain his pharmacy technician registration, even on a probationary basis.

Cost recovery

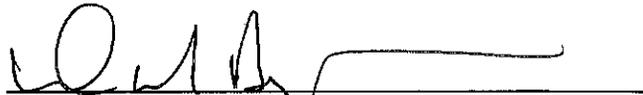
8. Section 125.3 provides that a licensee found to have violated the licensing laws may be ordered to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. While it was established that respondent violated the licensing laws, and complainant prays for cost recovery in the accusation, no evidence of its costs was presented. Therefore, complainant's request for cost recovery is denied.

ORDER

Pharmacy Technician Registration Number TCH 97122 issued to respondent Jared Evans Brooks is revoked. Respondent shall relinquish his technician license to the board within ten days of the effective date of this decision. Respondent may not reapply or petition

the board for reinstatement of his revoked technician license for three years from the effective date of this decision. A condition of reinstatement shall be that respondent is certified, as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the board.

DATED: September 16, 2014

A handwritten signature in black ink, appearing to read "David L. Benjamin", written over a horizontal line.

DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings

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Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 4585

12 **JARED EVAN BROOKS**
13 **869 19th Street**
San Jose, CA 95112

ACCUSATION

14 **Pharmacy Technician Registration No. TCH**
15 **97122**
Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Virginia K. Herold (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy.
- 21 2. On or about January 21, 2010, the Board issued Pharmacy Technician Registration
22 Number TCH 97122 to Jared Evan Brooks (Respondent). The Pharmacy Technician Registration
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 January 31, 2016, unless renewed.

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1 JURISDICTION

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

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

6 5. Section 4300.1 of the Code states:

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

12 6. Section 4301 of the Code states:

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

16 . . .

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

22 . . .

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

25 . . .

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

28 . . .

1 (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
2 violation of or conspiring to violate any provision or term of this chapter or of the applicable
3 federal and state laws and regulations governing pharmacy, including regulations established by
4 the board or by any other state or federal regulatory agency.

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

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

12 8. Section 4060 of the Code provides in part:

13 "No person shall possess any controlled substance, except that furnished to a person upon
14 the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor
15 pursuant to Section 3640.7, or furnished pursuant to a drug order issued by a certified
16 nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a
17 physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5,
18 or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of
19 subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not
20 apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy,
21 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified
22 nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly
23 labeled with the name and address of the supplier or producer.

24 "Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a
25 physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs
26 and devices."

27 9. Health and Safety Code section 11350 provides that every possesses any controlled
28 substance unless upon written prescription shall be punished by imprisonment.

1 10. Health and Safety Code section 11357(c) provides in part that every person who
2 possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished
3 by imprisonment in a county jail for a period of not more than six months or by a fine of not more
4 than five hundred dollars (\$500), or by both such fine and imprisonment.

5 11. Section 490 of the Code provides, in pertinent part, that a board may suspend or
6 revoke a license on the ground that the licensee has been convicted of a crime substantially
7 related to the qualifications, functions, or duties of the business or profession for which the
8 license was issued.

9 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
10 administrative law judge to direct a licentiate found to have committed a violation or violations of
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
12 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
13 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
14 included in a stipulated settlement.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Conviction of Substantially Related Crime)**

3 13. Respondent is subject to disciplinary action under section 4301(l) and section 490 of
4 the Code, by reference to California Code of Regulations, title 16, section 1770, for the
5 conviction of a substantially related crime, in that on or about July 26, 2012, in the Santa Clara
6 County Superior Court criminal case entitled *People v. Jared Brooks*, Case No. C1224720
7 Respondent was convicted by plea of nolo contendere of violating Health and Safety Code
8 section 11357(c) (Possession of over 1 oz. of Marijuana), a misdemeanor, with enhancement
9 pursuant to Penal Code section 12022(a)(1) (Armed with a firearm). The circumstances are as
10 follows:

11 a. On or about January 20, 2012, San Jose Police Officers entered Respondent's
12 residence which he shared with roommates. Once inside the Respondent's room, officers found
13 approximately 7 oz. of marijuana, marijuana "hash", a handgun and ammunition. Police officers
14 also found \$450 cash in Respondent's pockets. Officers concluded the evidence found
15 Respondent's room and on his person was consistent with an individual involved with the sale of
16 narcotics.

17 b. Officers interviewed Respondent after he was mirandized and he stated that he lived
18 in his bedroom, by himself, and estimated there to be about "two ounces" of marijuana in this
19 room. Respondent admitted to consuming 7 oz. of marijuana a month, and claimed that all the
20 marijuana that was found in his room was for personal use only. Respondent indicated the gun in
21 his possession was for home protection, and placed it down when he realized there were officers
22 on the premises. Respondent denied that he sold marijuana and said that he had a medicinal
23 marijuana card at one time, but it expired the previous year. Police officers confronted
24 Respondent about text messages found on Respondent's roommate's cell phone and indicated
25 Respondent was selling narcotics, to which Respondent said "I think I need a lawyer."

26 c. Respondent was sentenced as follows: Three (3) years probation, ordered to pay a
27 court fine, serve 180 days in county jail. Respondent was further ordered not to own or possess a
28

1 weapon, to submit to drug/alcohol testing, educational and vocational training and submit to
2 counseling.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Possession of Controlled Substance)**

5 14. Respondent is subject to discipline under section 4301(j) and/or (o) and/or section
6 4060 of the Code, and/or Health and Safety Code section 11357(c), in that Respondent, as
7 described in paragraph 21 above, possessed, conspired to possess, and/or assisted in or abetted
8 possession of, a controlled substance, without a prescription.

9
10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Self-Administration of Controlled Substance and/or Alcohol)**

12 15. Respondent is subject to discipline under section 4301(h) and/or 4301(j) of the Code,
13 and/or Health and Safety Code section 11350, in that Respondent, as described in paragraph 21
14 above, administered a controlled substance to himself.

15
16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Unprofessional Conduct)**

18 16. Respondent is subject to discipline under section 4301 of the Code, in that
19 Respondent, as described in paragraph 21 above, engaged in unprofessional conduct.

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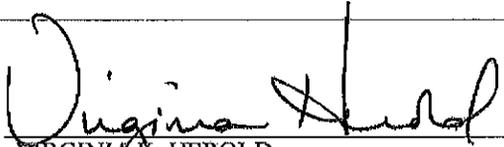
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PRAYER

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

1. Revoking or suspending Pharmacy Technician Registration Number TCH 97122, issued to Jared Evan Brooks;
2. Ordering Jared Evan Brooks to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED: 2/18/14



VIRGINIA K. HEROLD
Executive Officer
California State Board of Pharmacy
State of California
Complainant

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