



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

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Pierre Jones</u>	Case No. <u>AC 4619</u>
Address of Record: <u>1427 FIRST ST</u> <u>Dunsmuir CA 91010</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 4619, I hereby request to surrender my pharmacy technician license, License No. TCH 98576. 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.

Pierre Jones
 Applicant's Signature

5/8/15
 Date

V. Head
 Executive Officer's Approval

6/8/15
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. 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 administrative 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 1798.40 of the Civil Code.

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

In the Matter of the Accusation Against:

PIERRE JOSEPH JAMES,

Pharmacy Technician Registration No.
TCH 98576,

Respondent.

Case No. 4619

OAH No. 2014090557

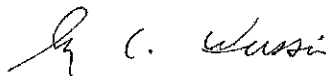
DECISION AND ORDER

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 May 15, 2015.

It is so ORDERED on April 15, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

BEFORE THE
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In the Matter of the Accusation Against:

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OAH No. 2014090557

PROPOSED DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 17, 2015, in Los Angeles.

Elyse M. Davidson, Deputy Attorney General, represented complainant Virginia K. Herold, Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Pierre Joseph James appeared on his own behalf.

The record was closed and the matter was submitted on February 17, 2015.

FACTUAL FINDINGS

Jurisdiction

1. Complainant filed the Accusation in her official capacity. Respondent timely filed a notice of defense.

2. The Board issued Pharmacy Technician Registration Number TCH 98576 to respondent on April 20, 2010. The license is scheduled to expire on July 31, 2015, unless renewed.

Respondent's Criminal Conviction

3. On May 1, 2012, in *People v. Pierre Joseph James* (Super. Ct. Los Angeles County, 2012, No.1VY06235), respondent pled no contest and was convicted of violating Vehicle Code sections 23152, subdivisions (a) (driving under influence of alcohol (DUI)) and (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater), and 20002,

subdivision (a) (hit and run, property damage) (two counts), all misdemeanors. The court found a factual basis for and accepted the plea. The court suspended imposition of sentence and placed respondent on 36 months' summary probation under terms and conditions including:

- a. As to count one (Veh. Code, § 23152, subd. (a)), that respondent serve 13 days in county jail, pay fines and fees totaling \$1,818, perform 300 hours of community service, enroll in and complete a three-month licensed first-offender alcohol and other drug education and counseling program, make restitution to victims, abstain from the use of alcoholic beverages and stay out of places where they are the chief items of sale, and install an ignition interlock device;
- b. As to count two (Veh. Code, § 23152, subd. (b)), staying sentence under Penal Code section 654, with the stay to become permanent upon completion of the sentence imposed in count one;
- c. As to count three (Veh. Code, § 20002, subd. (a)), that respondent pay fines and assessments totaling \$110; and
- d. As to count four (Veh. Code, § 20002, subd. (a)), staying sentence under Penal Code section 654, with the stay to become permanent upon completion of the sentence imposed in count three.

4. On June 27, 2012, at a restitution hearing in the same case, the court ordered respondent to pay \$1,239 to GNS Transit and \$2,369 to an individual victim.

5. The circumstances underlying the conviction are that, on December 8, 2011, respondent was driving his car southbound in a northbound lane on Cahuenga Boulevard in the early evening. He crashed into one northbound vehicle, did not stop, and subsequently crashed into another northbound vehicle. Respondent displayed symptoms of alcohol intoxication; he refused to complete field sobriety tests conducted by the arresting officer, admitting to the officer that he had had too much to drink. Respondent provided two breath samples, which reflected a BAC of 0.371 percent and 0.265 percent. He was taken to a hospital due to his level of intoxication, where his blood was tested and showed a BAC of 0.18 percent.

6. Respondent has paid the court-ordered victim restitution in full; he is still paying \$50 per month toward amounts owed on a civil claim made by the victim. Respondent has completed the court-ordered first-offender program, having attended AA meetings for nine months. Respondent has not satisfied certain other terms and conditions of his criminal probation. He has performed only 150 hours of the court-ordered 300 hours of community service, and he still owes the court \$2,000 in fees and assessments. The 36-month probationary period expires on April 30, 2015; respondent offered no evidence to demonstrate that he will be able to comply with the terms of probation by that date.

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Mitigation, Rehabilitation, and Findings Pertinent to License Discipline

7. Respondent has been licensed for almost five years. His license has never been subjected to discipline by the Board.

8. Respondent works at Bryant Ranch Pre-Pack, a closed-door pharmacy, repackaging bulk wholesale medications. He fills 1,500 to 3,000 vials per day and handles controlled substances. He testified that he thought he would need a license to do the work, but his employer does not require licensure. Respondent does not interact with patients. He loves his work, which he testified keeps him busy and "out of trouble." Respondent started working at the pharmacy in 2011; he now earns \$13 per hour. Although the pay is lower than he would like, respondent loves and excels at his job. Respondent lives with his wife, who also works.

9. Sarah Bayley, a licensed pharmacist and a Board inspector for the past 15 years, testified that DUI and hit-and-run convictions create a serious risk to the public and are therefore substantially related to the qualifications, functions, and duties of a pharmacy technician, who is required to safeguard patient safety and health. Bayley reviewed the February 6, 2013 report of Jenna Weddle, the Board investigator who found that respondent's convictions constituted unprofessional conduct. Bayley, who also reviewed the underlying documentation identified by Weddle, agrees with the investigator's findings.

10. Respondent testified that what he did on the day of his arrest was wrong and very irresponsible. He explained that he had started working at the age of 10, shining shoes and selling newspapers in a rough neighborhood in Boston. He was shot on five occasions, and decided to move to California. Respondent testified that he worked hard and prospered here; he was married and owned a home and five rental properties. He lost everything in the 2008 recession and became depressed.

11. Respondent testified that, on the day of his arrest, everything that had happened to him "just hit him." After work, he sat in a park, thinking about how his life had changed. Then he went to a liquor store while still dressed in his work scrubs and bought a bottle of cheap vodka. He sat in his parked car for about 30 minutes while he drank a half pint of the vodka, which he acknowledged he should not have done. He then began to drive home. He testified credibly, in view of his BAC tests, that he passed out and awoke in the hospital, and that he has no recollection of the accidents.

12. Respondent acknowledges that he deserved punishment for what he did, and understands why the Board is concerned. But he argued that he should now have a second chance. He has never been arrested for driving under the influence before or since December 8, 2011; it was a one-time event. He has paid all the court fines and assessments, and has paid the crash victims, though it took all his savings to do so. He remarried eight years ago, and he fears that the conviction and its aftermath may have irreparably damaged his marriage. His wife encouraged him to continue to attend AA meetings after he completed the court-ordered 12-step program, and he has done so every Sunday. He has not drunk any alcohol since the accident.

His wife encouraged respondent to see a doctor for his depression; he is glad she did, and the anti-depression medication his physician prescribed has helped him significantly. He plans to see a psychiatrist, again due to his wife's influence.

13. Respondent placed in evidence two character reference letters. One is from Thomas Hewitt, respondent's former employer in Massachusetts, who has known respondent for over 50 years. Respondent worked for Hewitt during the day at a tire shop for 11 years, after shining shoes in the morning and before selling newspapers in the evening. Hewitt wrote that respondent worked in order to avoid getting caught up in gangs, and that he became like a son to Hewitt, who is now the godfather of respondent's son. Hewitt wrote that respondent understands the consequences of his poor judgment with respect to his conviction, and is taking steps to make sure no similar incident occurs. The other letter, from respondent's brother, a mortgage servicing team manager for Urban Management, describes respondent as "energetic, trustworthy, and extremely dedicated to his family." He writes that respondent has expressed regret for the damage he has caused, and he "can see [respondent's] commitment to enhancing his way of living every day." (Ex. A.)

Cost of Enforcement

14. The Board incurred enforcement costs, in the form of Attorney General fees, in the amount of \$4,535. Those costs are reasonable. Complainant anticipated that the Board would incur approximately \$1,445 in additional attorney's fees from February 15, 2015, to the commencement of hearing. (Ex. 3.) A good faith estimate of costs may be used "where actual costs are unavailable." (Bus. & Prof. Code, § 125.3.) Complainant did not establish why she could not submit evidence of actual additional costs at hearing. Without such evidence, an award of anticipated costs must be, and is, disallowed.

15. Respondent testified credibly that paying full costs would be a financial hardship, in view of his low wages and the additional restitution payments he continues to make.

LEGAL CONCLUSIONS

Burden of Proof

1. The Board bears the burden of proof by a preponderance of the evidence, because pharmacy technicians hold an occupational license. (Evid. Code, § 115.)

2. This conclusion is supported by the Board's Disciplinary Guidelines (Guidelines),¹ which provide:

¹ "In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code section 11400 et seq.) the board shall consider the disciplinary

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.

(Guidelines, p. 43.) To obtain a license, an applicant must complete 240 hours of instruction covering, among other things, “the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.” (Cal. Code Regs., tit. 16, § 1793.6.) This is not analogous to the rigorous educational, training, and testing requirements for obtaining a professional license that justify imposition of a burden of proof of clear and convincing evidence. (See *Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856; *Imports Performance v. Department of Consumer Affairs, Bureau of Automotive Repair* (2011) 201 Cal.App.4th 911.)

3. Moreover, the law makes plain that a pharmacy technician performs nondiscretionary tasks that do not require the type of professional judgment exercised by a pharmacist. “A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of, a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (a); Cal. Code Regs., tit. 16, § 1793.) A pharmacy technician’s nondiscretionary tasks may include “removing the drug or drugs from stock; (b) counting, pouring, or mixing pharmaceuticals; (c) placing the product into a container; (d) affixing the label or labels to the container; (e) packaging and repackaging.” (Cal. Code Regs., tit. 16, § 1793.2.) A pharmacy technician is not authorized “to perform any act requiring the exercise of professional judgment by a pharmacist.” (Bus. & Prof. Code, § 4115, subd. (c); Cal. Code Regs., tit. 16, § 1793.) Only a pharmacist may perform such tasks as receiving new oral prescriptions, evaluating and interpreting prescriptions, interpreting a patient’s medication records, and consulting with prescribing physicians. (Cal. Code Regs., tit. 16, § 1793.1.)

Applicable Authority

4. The Board may take action against a licensee for unprofessional conduct, which includes committing acts of moral turpitude, dishonesty, fraud, deceit, or corruption (Code, § 4301, subd. (f)), the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself or any other person or to the public (Code, § 4301, subd. (h)), and the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee (Code, § 4301, subd. (l)).

Cause for Discipline

guidelines entitled “Disciplinary Guidelines” (Rev. 10/2007), which are hereby incorporated by reference.” (Cal. Code Regs., tit. 16, § 1760.)

5. Cause does not exist to discipline respondent's pharmacy technician license under Business and Professions Code section 4301, subdivision (f), for acts involving moral turpitude, dishonesty, fraud, deceit, or corruption. While respondent intentionally and irresponsibly drank alcohol and then drove his car, thereby endangering himself and others and causing harm to others, the evidence established that his hit-and-run actions are attributable to the degree of his inebriation and not to moral turpitude, dishonesty, fraud, deceit, or corruption, as set forth in Factual Findings 3 through 5 and 10 through 13.

6. Cause exists to discipline respondent's pharmacy technician license under Business and Professions Code section 4301, subdivision (h), on the grounds that respondent used alcoholic beverages to the extent or in a manner as to be dangerous to himself or others, as set forth in Factual Findings 3 through 5.

7. Cause exists to discipline respondent's pharmacy technician license under Business and Professions Code sections 490 and 4301, subdivision (l), on the grounds that respondent was convicted of crimes that are substantially related to the qualifications, functions, and duties of a pharmacy technician, as set forth in Factual Findings 3 through 5 and 9.

8. Respondent's convictions are substantially related to the qualifications, functions, and duties of a pharmacy technician. Respect for public safety and compliance with the law are paramount for pharmacy technicians, who have access to dangerous drugs and controlled substances, are privy to sensitive personal information of pharmacy clients, and have been placed in a position of trust with respect to patient care. Respondent's crimes of driving under the influence of alcohol, driving with a BAC exceeding 0.08 percent, and hit-and-run, evidence a potential unfitness to perform the functions of a pharmacy technician in a manner consistent with the public health, safety, and welfare.

9. The following factors are relevant when determining the level of license discipline to impose: actual or potential harm to the public, actual or potential harm to any consumer, prior disciplinary record, number and variety of current violations, nature and severity of the crimes under consideration, aggravating evidence, mitigating evidence, rehabilitation evidence, compliance with terms of any criminal sentence or probation, overall criminal record, evidence of expungement under Penal Code section 1203.4, time passed since the acts or offenses, whether the conduct was intentional or negligent or demonstrated incompetence, and financial benefit to the respondent from the misconduct. (Guidelines (p. 3), Bus. & Prof. Code, § 4300.)

10. Respondent engaged in a serious offense, drinking and then driving in a manner that could have endangered other persons and that did cause damage to property, raising concern about the potential risk to public safety of allowing respondent to act as a pharmacy technician. That concern, however, is significantly mitigated by the fact that respondent has committed no similar offenses before or since he committed the crime. His license has never been disciplined. There is no evidence on the record that he suffers from alcohol dependency or from any drug dependency, or that he abuses alcohol or controlled substances. Respondent was under tremendous personal stress at the time he committed the offense, which appears to have

been an aberrant event in respondent's life. While there was no evidence from any mental health professional to attest to the unlikelihood of respondent reacting similarly to any future setbacks in his personal life, he has refrained from consuming alcohol since the date of the accident, he has sought and obtained medical help for his depression, and he plans to seek counseling from a mental health professional.

11. Probation in this matter is appropriate. Probationary terms, including requirements that respondent refrain from alcohol use, submit to testing for alcohol, and continue to attend a substance abuse recovery support group should suffice to protect the public. Respondent's crimes and convictions are just over three years old, and respondent is currently serving a three-year probationary period. But while respondent's behavior while on criminal probation may not be used to establish rehabilitation (*In re Gossage* (2000) 23 Cal.4th 1080), and he may not complete the terms before probation expires, respondent's offense was not typical behavior for him, and he has made great efforts at rehabilitation beyond what was required by the terms of his court-ordered probation. (Factual Findings 6-8, 10-13.) It is appropriate that a term of respondent's probation in this matter require respondent to complete, to the court's satisfaction, the terms and conditions of his criminal probation. The statutes relating to the licensing of professions generally are designed to protect the public from dishonest, untruthful, and disreputable licensees (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451), not to punish (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165). In issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.*; see also *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

Cost Recovery

12. Complainant is entitled to the recover reasonable costs of prosecution of this matter in the amount of \$4,535, as set forth in Factual Finding 14. Respondent may pay costs in accordance with a payment schedule agreeable to the Board, based on Factual Findings 6, 8, 12, and 15. (Bus. & Prof. Code, § 125.3.)

13. The following language from Term No. 7 of the standard terms of probation concerning cost recovery has been omitted from the Order, below: "The filing of bankruptcy by respondent shall not relieve respondent of his or her responsibility to reimburse the board its costs of investigation and prosecution." Costs imposed in a disciplinary proceeding may be dischargeable under 11 U.S.C. § 523(a)(7). (See *In Re Taggart* (9th Cir. 2001) 249 F.3d 987.)

ORDER

Pharmacy technician license number TCH 98576 is revoked; however, the revocation is stayed and respondent is placed on probation for three years upon the following terms and conditions:

1. Certification Prior to Resuming Work

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

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

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

2. 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.

3. 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.

4. 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.

5. 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 or her probation. Failure to cooperate shall be considered a violation of probation.

6. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 4619 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 or her 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 4619 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her 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 or her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 4619 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 or her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the decision in case number 4619 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his or her 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.

7. 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 \$4,535. Respondent shall make said payments as follows: in accordance with a monthly payment plan acceptable to the Board. 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.

8. 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.

9. 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.

10. 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 or her 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 or her 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.

11. 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.

12. 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 number of hours per calendar month, as determined by the board. 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 number of hours per calendar month in California, as determined by the board, 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 calendar month during which respondent is not working for at least a number of hours, determined by the board, 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 a number of hours, determined by the board, as a pharmacy technician as defined by Business and Professions Code section 4115.

13. 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.

14. Completion of Probation

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

15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been

approved by the board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

16. Random Drug Screening (Alcohol Only)

Respondent, at his own expense, shall participate in random testing, including but not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug screening program as directed by the board or its designee. Respondent may be required to participate in testing for the entire probation period and the frequency of testing will be determined by the board or its designee. At all times respondent shall fully cooperate with the board or its designee, and shall, when directed, submit to such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its designee may direct. Failure to timely submit to testing as directed shall be considered a violation of probation. Upon request of the board or its designee, respondent shall provide documentation from a licensed practitioner that the prescription for a detected drug was legitimately issued and is a necessary part of the treatment of the respondent. Failure to timely provide such documentation shall be considered a violation of probation. Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment shall be considered a violation of probation and shall result in the automatic suspension of work by respondent. Respondent may not resume work as a pharmacy technician until notified by the board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or 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.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

17. Abstain from Drugs and Alcohol Use

Respondent shall completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia except when the drugs are

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

18. Completion of Criminal Probation

Respondent shall complete, to the court's satisfaction, the terms and conditions of probation ordered in *People v. Pierre Joseph James* (Super. Ct. Los Angeles County, 2012, No.1VY06235), and shall promptly thereafter provide documentation to the board confirming that he has completed his criminal probation.

DATED: March 4, 2015



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

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7

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

10 In the Matter of the Accusation Against:

Case No. 4619

11 **PIERRE JOSEPH JAMES**
12 **1427 First Street**
13 **Duarte, CA 91010**

ACCUSATION

14 **Pharmacy Technician Registration No.**
15 **TCH 98576**

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 April 20, 2010, the Board issued Pharmacy Technician Registration
22 Number TCH 98576 to Pierre Joseph James (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 will expire on July 31, 2013, unless renewed.

25 **JURISDICTION**

- 26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.
28

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

3 5. Section 4300.1 states:

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

9 6. Section 4301 of the Code states:

10 "The board shall take action against any holder of a license who is guilty of unprofessional
11 conduct or whose license has been procured by fraud or misrepresentation or issued by mistake.

12 Unprofessional conduct shall include, but is not limited to, any of the following:

13 (a) Gross immorality.

14 (b) Incompetence.

15 (c) Gross negligence.

16 . . .

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

20 . . .

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

26 . . .

27 (i) The conviction of a crime substantially related to the qualifications, functions, and
28 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13

1 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
2 substances or of a violation of the statutes of this state regulating controlled substances or
3 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
4 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
5 The board may inquire into the circumstances surrounding the commission of the crime, in order
6 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
7 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
8 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
9 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
10 of this provision. The board may take action when the time for appeal has elapsed, or the
11 judgment of conviction has been affirmed on appeal or when an order granting probation is made
12 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
13 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
14 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
15 indictment.

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

22 8. Section 22 of the Code states:

23 "(a) 'Board' as used in any provisions of this Code, refers to the board in which the
24 administration of the provision is vested, and unless otherwise expressly provided, shall include
25 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and
26 'agency.'

27 "(b) Whenever the regulatory program of a board that is subject to review by the Joint
28 Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2

1 (commencing with Section 473), is taken over by the department, that program shall be
2 designated as a 'bureau.'"

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

7 10. Section 493 of the Code states:

8 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
9 the department pursuant to law to deny an application for a license or to suspend or revoke a
10 license or otherwise take disciplinary action against a person who holds a license, upon the
11 ground that the applicant or the licensee has been convicted of a crime substantially related to the
12 qualifications, functions, and duties of the licensee in question, the record of conviction of the
13 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
14 and the board may inquire into the circumstances surrounding the commission of the crime in
15 order to fix the degree of discipline or to determine if the conviction is substantially related to the
16 qualifications, functions, and duties of the licensee in question.

17 As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration'.

18 **FIRST CAUSE FOR DISCIPLINE**

19 **(Conviction of Substantially Related Crime)**

20 11. Respondent is subject to disciplinary action under section 4301(l) in that he suffered
21 criminal convictions substantially related to the qualifications, functions, and duties of a licensee.
22 The circumstances are as follows:

23 12. On or about December 8, 2011, L.A.P.D. Officers responded to the scene of a three
24 car traffic collision involving the Respondent. Officers approached Respondent and observed he
25 displayed symptoms of alcohol intoxication. Respondent was unable to complete Field Sobriety
26 Tests (FST) administered by the officers. Respondent submitted to a Preliminary Alcohol
27 Screening breath test with B.A.C. results of 0.37 and 0.26. Respondent's blood was drawn a few
28 hours later with a B.A.C. result of 0.18%. Witnesses to the accident told police that Respondent

1 had collided with another vehicle and had fled that scene, only to become involved in the three
2 car accident just blocks away. Respondent was arrested and charged with VC 23152 (DUI) and
3 VC 20002 (Hit & Run). Drivers and occupants of the other cars involved in the collisions
4 suffered injuries as a result of Respondent's driving under the influence. On May 1, 2012, in the
5 case entitled *People of the State of California v. Pierre Joseph James*, case no. IVY06235,
6 Respondent pleaded *No Contest* to the DUI and hit and run charges, was placed on probation and
7 sentenced to 13 days county jail.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Dangerous Use of Alcohol or Drugs)**

10 13. Respondent is subject to disciplinary action under section 4301(h) in that he used
11 alcohol to the extent or in a manner as to be dangerous or injurious to oneself or others. The
12 circumstances which this allegation relies upon are detailed above in paragraph 11 and are
13 incorporated herein by reference.

14 **THIRD CAUSE FOR DISCIPLINE**

15 **(Acts Involving Moral Turpitude)**

16 14. Respondent is subject to disciplinary action under section 4301(f) in that he
17 committed acts involving moral turpitude, dishonesty, fraud, deceit or corruption. The
18 circumstances which this allegation relies upon are detailed above in paragraph 11 and are
19 incorporated herein by reference.

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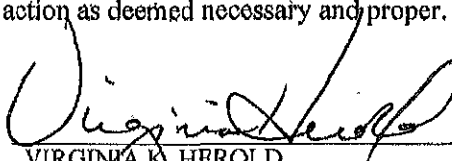
PRAYER

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 98576, issued to Pierre Joseph James;
2. Ordering Pierre Joseph James to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to B&P Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED:

2/10/14



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

LA2013509451