

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

In the Matter of the Accusation Against:

RIAN ROBERT HOOVER,

Pharmacy Technician Registration No.
TCH 107183

Respondent.

Case No. 4719

OAH No. 2014030709

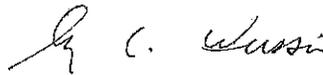
DECISION AND ORDER

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 April 24, 2015.

It is so ORDERED on March 25, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STAN C. WEISSER
Board President

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PROPOSED DECISION

Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on February 5, 2015, in San Diego, California.

Jonathan I. Lapin, Deputy Attorney General, Department of Justice, represented complainant.

Rian Robert Hoover, respondent, represented himself and was present throughout the administrative proceeding.

The matter was submitted on February 5, 2015.

FACTUAL FINDINGS

Background

1. On October 21, 2013, complainant, Virginia Herold, Executive Officer, Board of Pharmacy, Department of Consumer Affairs, State of California, filed the Accusation in this matter in her official capacity.
2. On February 16, 2011, the board issued to respondent, Mr. Hoover, Original Pharmacy Technician Registration Number TCH 107183. The registration expired on June 30, 2014, and was cancelled on October 15, 2014, pursuant to Business and Professions Code section 4402, subdivision (e). At all relevant times Mr. Hoover's license was in full force and effect.

Mr. Hoover's Convictions

3. On February 15, 2013, in the San Diego County Superior Court, Mr. Hoover pled guilty and was convicted of violating one count each of California Penal Code section 245, subdivision (b), assault with semi-automatic firearm, and Penal Code section 417.3, draw/exhibit firearm in presence of motor vehicle occupant, both felonies. Complainant did not submit a sentencing order from the Superior Court, but Mr. Hoover was sentenced to 90 days in custody, which was satisfied through house arrest and work furlough. Mr. Hoover was also placed on formal probation for two years and ordered to pay fines and fees. Pursuant to the plea agreement, upon successful completion of probation, Mr. Hoover was allowed to withdraw his guilty plea to Penal Code section 245, and the charge would be dismissed pursuant to Penal Code section 1203.4. Mr. Hoover's probation is scheduled to end in April 2015.

4. The circumstances underlying Mr. Hoover's convictions are as follows: on September 8, 2012, Mr. Hoover was driving his car when a motorcycle pulled in front of Mr. Hoover's car, forcing Mr. Hoover to break suddenly. Mr. Hoover sounded his horn at the motorcycle, and the motorcycle again braked suddenly. Mr. Hoover continued to follow the motorcyclist. When they stopped at stoplights, the motorcyclist turned around to face Mr. Hoover and made offensive hand gestures. When Mr. Hoover reached the location where he would normally turn in order to go home, he instead continued to follow the motorcycle. The motorcyclist then turned into a commercial parking lot, and Mr. Hoover followed him into the parking lot. At some point the motorcyclist began to approach Mr. Hoover's car, and Mr. Hoover then pointed a black semi-automatic pistol at the motorcyclist. Mr. Hoover then drove away.

The motorcyclist reported this to the San Diego Police, who stopped Mr. Hoover's car. The police officers took Mr. Hoover into custody and found a black semi-automatic pistol underneath the driver's seat.¹ There was a bullet inside the magazine, but the bullet had been loaded backwards. There was also a shell casing on the seat. The motorcyclist positively identified Mr. Hoover as the assailant, and the police arrested Mr. Hoover charging him with assault with a deadly weapon and carrying a loaded firearm.

Mr. Hoover told the officers that he had been involved in a "road-rage" incident with the motorcyclist but denied ever having pointed a gun at the motorcyclist. When questioned how the motorcyclist would have known Mr. Hoover had a black pistol in the car, Mr. Hoover responded that it must have been a "lucky guess."

¹ An investigation report pertaining to this matter was received under *Lake v. Reed* (1997) 16 Cal.4th 448. That case held that portions of a law enforcement officer's report that contained a party's admissions against interest could be received to establish a finding of fact in an administrative proceeding. Under Government Code section 11513, subdivision (c), hearsay statements in the report could be received in the administrative proceeding to support or explain other evidence.

Testimony of Inspector Joshua Lee, Pharm. D.

5. Joshua Lee is an inspector with the California State Board of Pharmacy, a position he has held for three years. His responsibilities include conducting inspections and investigations of pharmacies and training new board inspectors. He holds a Doctor of Pharmacy from the University of the Pacific. Prior to his employment with the board, Inspector Lee worked as a pharmacist for five years. He was a staff pharmacist at a community pharmacy for four years and worked as a travelling pharmacist for one year. He also worked one year as a clinical pharmacist at a hospital.

6. As a pharmacist, Inspector Lee worked extensively with pharmacy technicians. Based on his employment with the board, and his experience as a pharmacist, Inspector Lee is familiar with the duties and responsibilities of a pharmacy technician. A pharmacy technician interacts with the public, receives orders, processes prescriptions, dispenses the prescription to the customer, and helps manage inventory. The primary responsibility of the pharmacy technician is to interact with the customer.

7. A pharmacist must directly supervise the actions of a pharmacy technician. However, the pharmacist may leave the pharmacy technician unattended during the pharmacist's lunch break. Although the technician must be supervised, in reality, a pharmacist is only generally aware of what a pharmacy technician is doing. It is common for a pharmacy technician to perform tasks of which the pharmacist lacks direct knowledge. Inspector Lee testified that a pharmacy technician must exercise good judgment because of the contact with the public. During his experience as a pharmacist, Inspector Lee had contact with many people who had a medical or emotional condition, and customers would frequently become upset and volatile. Thus, it is important for a pharmacy technician to remain calm under pressure.

Mr. Hoover's Testimony

8. Mr. Hoover is 35 years old. He attended three years of college and accumulated 70 credits. In 2011, he began working as a pharmacy technician at Prescription Solutions, now named OptumRx, a mail-order pharmacy located in Carlsbad, California. At OptumRx he never had direct contact with customers, except occasionally over the phone. He was promoted to lead pharmacy technician in 2012. In this position, he supervised 30 clerks and 40 pharmacy technicians. Following his weapons convictions, Mr. Hoover was terminated from this position. After he was released from work furlough, he found employment with Forecast 3D, in Carlsbad, California, a company that makes product prototypes using 3D printing. He is currently employed there and works in quality assurance.

9. Mr. Hoover emphasized the financial strains caused by his convictions. He is in arrears on a number of accounts. He owes \$5,421 to the Internal Revenue Service. He missed two required payments to San Diego County as part of his criminal probation costs, which caused his wages to be garnished. He has since paid the past-due amount and

currently has a balance of \$2,431. He testified that he had \$22,000 in bills last year and made only \$23,497 in income. He explained that he did not renew his pharmacy technician certification because he could not afford to pay the fees required for renewal. He does not intend to work as a pharmacy technician in the near future. He has been married for nine years and has a nine-month old daughter.

10. Mr. Hoover does not believe there is a relationship between his criminal convictions and his ability to work as a pharmacy technician. He testified he always exhibited integrity and responsibility at work; he never had a complaint against him, and he has never been disciplined. He noted that his promotion to lead pharmacy technician reflected his commitment and dedication to the job and that he would not have been promoted had he not excelled in the position. He does not believe his license should be disciplined because his criminal conviction was wholly unrelated to his job.

11. As to the incident that led to the assault and firearms convictions, Mr. Hoover's testimony was inconsistent. On cross-examination, he first admitted that he pulled a gun and pointed it at the motorcyclist. He was then asked why he had denied this when questioned by the police at the time of his arrest. Mr. Hoover responded that he never pulled a gun, and testified that he had done so only because he pled guilty to the offense. He testified that he never pulled a gun on the motorcyclist but that he was wearing black gloves and gave the motorcyclist "the finger." When he was asked why he pled guilty to the offense if he was in fact innocent, Mr. Hoover responded that there was no way he could prove that he did not pull the gun out, especially since the police found a gun in his car.

Evaluation of Mr. Hoover's Testimony

12. Notwithstanding the fact that Mr. Hoover pled guilty and admitted under oath in his criminal proceedings that he was in fact guilty², Mr. Hoover's version of events—that the victim misidentified his middle finger as a semiautomatic pistol—defies credulity. To credit Mr. Hoover's testimony that he never displayed a gun, the victim would have to have misidentified Mr. Hoover's finger for a firearm, and then, only by happenstance, would the police find a gun under Mr. Hoover's driver's seat. Such a proposition completely strains the bounds of logic and reflects poorly on Mr. Hoover's candor in these proceedings.

Cost Recovery

13. Complainant submitted a certification of costs and requested cost recovery pursuant to Business and Professions Code section 125.3. The certification is for work performed by the Office of the Attorney General and shows costs of prosecution in the

² A conviction based on a plea is conclusive proof of guilt for that offense. An individual cannot impeach his conviction in an administrative proceeding. The crime to which the plea was entered can, by itself, support a factual finding that the offense at issue has a substantial relationship to the qualifications, functions, or duties of the profession. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 452.)

amount of \$2,150. The evidence shows that those costs were incurred and that they are reasonable. The certification complies with the requirements of California Code of Regulations, title 1, section 1042, subdivision (b)(3).

14. Mr. Hoover has substantial liabilities and is in arrears on several of his debts, including one owed to the Internal Revenue Service. His present income is not sufficient to support his financial obligations. Therefore, Mr. Hoover would not be able to pay the prosecution costs.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The board's disciplinary guidelines observe that pharmacy technicians are issued a license³ 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.

2. In proceedings to revoke professional licenses, the clear and convincing evidence standard of proof applies; the preponderance of the evidence standard of proof applies in proceedings to revoke nonprofessional or occupational licenses. The sharp distinction between professional licenses and nonprofessional licenses supports the distinction in the standards of proof. Because a professional license represents the fulfillment of extensive educational, training and testing requirements, a licensee has an extremely strong interest in retaining the license that he or she has expended so much effort to obtain. The same cannot be said for a licensee's interest in retaining a nonprofessional license even though an applicant for an occupational license is required complete certain coursework and pass an examination. (*Lone Star Sec. & Video, Inc. v. Bureau of Security and Investigative Services* (2012) 209 Cal.App.4th 445, 453-454.)

3. The complainant has the burden of proving the charging allegations by a preponderance of the evidence. The preponderance of the evidence standard applies in this proceeding because a pharmacy technician registration is a nonprofessional/occupational license. However, the application of the preponderance of the evidence standard is not critical to the outcome in this matter because the same conclusions would be reached even if the clear and convincing evidence standard were applied.

³The term "license" includes "certificate, registration, or any other means to engage in a business or profession" regulated by the Business and Professions Code. (Bus. & Prof. Code, § 477, subd. (b).)

Applicable Statutes and Regulations

4. 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. Pharmacy Technician Registration No. TCH 107183 expired on June 30, 2014.

5. Business and Professions Code section 4301 provides in part:

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

[¶] . . . [¶]

(1) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances of 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.

6. California Code of Regulations, title 16, section 1770, addresses the issue of substantial relationship. It states in part that:

...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.

Substantially Related Criminal Conviction

7. Mr. Hoover's criminal convictions are substantially related to the qualifications, functions, and duties of a pharmacy technician registrant within the meaning of California Code of Regulations, title 16, section 1770. The crimes of assault with a deadly weapon, and display of a firearm to a motor vehicle occupant, committed by Mr. Hoover, show, to a substantial degree, his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, or welfare. In this case, Mr. Hoover intentionally escalated a situation that would be, to most, a simple annoyance encountered by many drivers navigating today's congested roadways. However, unlike most people, who might have handled being cut off with no worse than a muttered expletive, Mr. Hoover did not let the perceived insult pass. Instead, he followed the motorcyclist and engaged in what can be described only as back-and-forth taunting. This culminated in a confrontation in a parking lot, where Mr. Hoover ultimately pulled a gun and pointed it at the motorcyclist. Mr. Hoover created the potential for grave injury.

8. Licensees in the health care industry are required to abide by numerous laws and regulations established to protect the health and safety of the public. This includes abiding by laws that govern the licensee's activities that may not be directly related to his or her professional license but that could impact the public's health and safety outside the work environment. Mr. Hoover has demonstrated a terrible lapse of judgment in pointing a firearm at another motorist. At many different points prior to the encounter with the motorcyclist in the parking lot, Mr. Hoover could have withdrawn himself from the situation. Indeed, he went out of his way to follow the motorcyclist and made the decision to engage him in the parking lot. A person who commits an act of violence poses a risk to the health, safety and welfare of the public. A pharmacy technician's work involves public interaction and dealing with difficult and emotional customers. The act of violence of which respondent was convicted showed a dangerous volatility and a conscious and selfish disregard for the law and the rights of others. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098, citing *In re Nevill* (1985) 39 Cal.3rd 729,735 and *In re Strick* (1987) 43 Cal3rd 644, 653.)

Cause to Discipline

9. Cause exists to discipline Mr. Hoover's pharmacy technician registration pursuant to Business and Professions Code section 4301, subdivision (l), in that the preponderance of evidence established that Mr. Hoover was convicted of crimes that are

substantially related to the qualifications, functions, and duties of a pharmacy technician registrant.

Evaluation of Appropriate Discipline

10. California Code of Regulations, title 16, section 1769, subdivision (b) states:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

11. California Code of Regulations, title 16, section 1760, states:

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 guidelines entitled "Disciplinary Guidelines" (Rev. 10/2007), which are hereby incorporated by reference.

Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation-the presence of mitigating factors; the age of the case; evidentiary problems.

12. The board's Disciplinary Guidelines state that the board files cases against pharmacy technicians where the violations involve significant misconduct on the part of the licensee. The board believes that revocation is typically the appropriate penalty when grounds for discipline are found to exist.

13. The board's Disciplinary Guidelines list the following factors to be considered in determining penalties:

In determining whether the minimum, maximum, or an intermediate penalty is to be imposed in a given case, factors such as the following should be considered:

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

15. financial benefit to the respondent from the misconduct.

No single one or combination of the above factors is required to justify the minimum and/or maximum penalty in a given case, as opposed to an intermediate one.

14. Applying the board's criteria in this matter, the crimes did not occur in the course of his job as a registered pharmacy technician. Mr. Hoover has not been the subject of any prior disciplinary actions or warnings from the board, and the convictions resulted from a single act of misconduct that took place two and one-half years ago. In imposing house arrest with work furlough, the court presumably acknowledged respondent's lack of criminal history, the recommendations of the probation report, and the likelihood that respondent poses no risk of harm to the public. Mr. Hoover has successfully served his sentence of house arrest with work furlough and has served almost all of his formal probation without incident, except for his failure to timely pay his required costs. Respondent's probationary period will end in April of 2015, at which time Mr. Hoover will be allowed to withdraw his guilty plea to the assault with a deadly weapon charge. Mr. Hoover has never had any disciplinary problems at his places of employment.

15. Mr. Hoover is not rehabilitated. Rehabilitation is a state of mind. The law looks with favor on one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.) The evidentiary significance of an individual's misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*In Re Gossage* (2000) 23 Cal.4th 1080, 1098; *Kwasnik v. State Bar* (1990) 50 Cal.3d 1061, 1070.) Mr. Hoover has not accepted responsibility for his actions, and he now denies the conduct resulting in his convictions. At the very least, Mr. Hoover expressed more remorse over the outcome of his criminal conviction, and the attendant financial difficulties it caused, rather than his conduct. Not only did Mr. Hoover not take responsibility for his actions, he provided inconsistent testimony in these proceedings, and recanted his prior admissions of guilt. Mr. Hoover submitted no other evidence of rehabilitation.

16. Due to the present lack of evidence of rehabilitation, and the nature and seriousness of the offenses for which he was convicted, public health and safety require the revocation of respondent's registration.

Cost Recovery

17. Complainant is seeking recovery of the reasonable costs of prosecution in the amount of \$2,150. The California Supreme Court in *Zuckerman v. State Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 held that a regulation imposing costs for investigation and enforcement under California Code of Regulations, title 16, section 317.5, which is similar to Business and Professions Code section 125.3, did not violate due process. But it was incumbent on the board in that case to exercise discretion to reduce or eliminate cost awards in a manner such that costs imposed did not "deter [licensees] with potentially

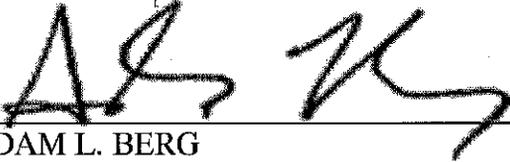
meritorious claims or defenses from exercising their right to a hearing.” The Supreme Court set forth four factors to consider in deciding whether to reduce or eliminate costs: (1) whether the licensee used the hearing process to obtain dismissal of other charges or a reduction in the severity of the discipline imposed; (2) whether the licensee had a “subjective” good faith belief in the merits of his or her position; (3) whether the licensee raised a “colorable challenge” to the proposed discipline; and (4) whether the licensee had the financial ability to make payments. The reasoning of *Zuckerman* must be applied to Business and Professions Code section 125.3 since the language in the cost recovery regulation at issue in *Zuckerman* and section 125.3 are substantially the same.

18. The costs claimed totaling \$2,150 are reasonable. However, Mr. Hoover had a subjective good faith belief that his convictions are not substantially related to the duties of a pharmacy technician. Moreover, he had a “colorable” challenge to the proposed discipline. Finally, as established by his multiple financial obligations, Mr. Hoover has no ability pay the costs of prosecution. Therefore, Mr. Hoover shall not be ordered to pay costs in this matter.

ORDER

Pharmacy technician registration number TCH 107183 issued to respondent Rian Robert Hoover is revoked. Respondent may not reapply or petition the board for reinstatement of his revoked registration for three years from the effective date of this decision.

Dated: March 2, 2015



ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4719

12 **RIAN ROBERT HOOVER**
13 **7235 Charmant Drive, #826**
14 **San Diego, CA 92122**

A C C U S A T I O N

15 **Pharmacy Technician Registration**
No. TCH 107183

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about February 16, 2011, the Board of Pharmacy issued Pharmacy Technician
23 Registration Number TCH 107183 to Rian Robert Hoover (Respondent). The Pharmacy
24 Technician Registration was in full force and effect at all times relevant to the charges brought
25 herein and will expire on June 30, 2014, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4300(a) of the Code states that "[e]very license issued may be suspended or
6 revoked."

7 5. Section 4300.1 states:

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

14 **STATUTORY PROVISIONS**

15 6. Section 482 of the Code states:

16 Each board under the provisions of this code shall develop criteria to
17 evaluate the rehabilitation of a person when:

18 (a) Considering the denial of a license by the board under Section 480; or

19 (b) Considering suspension or revocation of a license under Section 490.
20 Each board shall take into account all competent evidence of rehabilitation
21 furnished by the applicant or licensee.

22 7. Section 490 of the Code states:

23 (a) In addition to any other action that a board is permitted to take against
24 a licensee, a board may suspend or revoke a license on the ground that the licensee
25 has been convicted of a crime, if the crime is substantially related to the
26 qualifications, functions, or duties of the business or profession for which the
27 license was issued.

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

(c) A conviction within the meaning of this section means a plea or verdict of
guilty or a conviction following a plea of nolo contendere. Any action that a board is
permitted to take following the establishment of a conviction may be taken when the
time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,

1 or when an order granting probation is made suspending the imposition of sentence,
2 Irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
3 Code.

4 (d) The Legislature hereby finds and declares that the application of this
5 section has been made unclear by the holding in *Petropoulos v. Department of*
6 *Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed
7 a significant number of statutes and regulations in question, resulting in potential
8 harm to the consumers of California from licensees who have been convicted of
9 crimes. Therefore, the Legislature finds and declares that this section establishes an
10 independent basis for a board to impose discipline upon a licensee, and that the amendments
11 to this section made by Senate Bill 797 of the 2007-2008 Regular
12 Session.

13 8. Section 493 of the Code states:

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

24 9. Section 4301 of the Code states:

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

.....

29 (l) The conviction of a crime substantially related to the qualifications,
30 functions, and duties of a licensee under this chapter. The record of conviction
31 of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the
32 United States Code regulating controlled substances or of a violation of the statutes
33 of this state regulating controlled substances or dangerous drugs shall be conclusive
34 evidence of unprofessional conduct. In all other cases, the record of conviction
35 shall be conclusive evidence only of the fact that the conviction occurred. The
36 board may inquire into the circumstances surrounding the commission of the crime,
37 in order to fix the degree of discipline or, in the case of a conviction not involving controlled
38 substances or dangerous drugs, to determine if the conviction is of an
39 offense substantially related to the qualifications, functions, and duties of a licensee
40 under this chapter. A plea or verdict of guilty or a conviction following a plea of
41 nolo contendere is deemed to be a conviction within the meaning of this provision
42 The board may take action when the time for appeal has elapsed, or the judgment
43 of conviction has been affirmed on appeal or when an order granting probation is
44 made suspending the imposition of sentence, irrespective of a subsequent order

1 under Section 1203.4 of the Penal Code allowing the person to withdraw his or her
2 plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty,
3 or dismissing the accusation, information, or indictment.

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

9 **REGULATORY PROVISIONS**

10 10. California Code of Regulations, title 16, section 1769 states:

11 (b) When considering the suspension or revocation of a facility or a
12 personal license on the ground that the licensee or the registrant has been
13 convicted of a crime, the board, in evaluating the rehabilitation of such
14 person and his present eligibility for a license will consider the following criteria:

- 15 (1) Nature and severity of the act(s) or offense(s).
- 16 (2) Total criminal record.
- 17 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 18 (4) Whether the licensee has complied with all terms of parole, probation,
19 restitution or any other sanctions lawfully imposed against the licensee.
- 20 (5) Evidence, if any, of rehabilitation submitted by the licensee.

21 11. California Code of Regulations, title 16, section 1770 states:

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

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1 **COST RECOVERY**

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

8 **CAUSE FOR DISCIPLINE**

9 **(February 15, 2013 Criminal Conviction for Assault With a Semi-Automatic Firearm**
10 **and for Drawing or Exhibiting Firearm in Presence of Motor Vehicle Occupant on**
11 **September 8, 2012)**

12 13. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
13 (l) of the Code in that he was convicted of a crime that is substantially related to the qualifications,
14 duties and functions of a pharmacy technician. The circumstances are as follows:

15 14. On or about February 15, 2013, in a criminal proceeding entitled *People of the State of*
16 *California v. Rian R. Hoover*, in the Superior Court of California, County of San Diego, Central
17 Division, in Case No. SCD243175, Respondent was convicted on his plea of guilty of violating
18 Penal Code sections 245(b) (assault with semi-automatic firearm) and 417.3 (drawing or exhibiting
19 firearm in presence of motor vehicle occupant), felonies. As a result of a plea agreement, a count
20 for violating Penal Code section 25850(a) (carrying a loaded firearm on one's person) was
21 dismissed.

22 15. As a result of the conviction, Respondent was placed on two years probation and
23 ordered to serve 90 days in a work furlough program. The plea agreement also included that after
24 successful completion of the two years probation, the Court would allow Respondent to withdraw
25 his plea as to count one (Penal Code section 245(b)) and that charge would be dismissed.

26 16. The circumstances that led to the conviction are that on September 8, 2012, at
27 approximately 12:00 a.m., San Diego Police Department Officers responded to a report of a road
28 rage incident involving a silver Dodge and another vehicle in the area of 4300 La Jolla Village

1 Drive. The reporting party (RP) told dispatch that the driver of the silver Dodge had brandished a
2 firearm and pointed it at the RP.

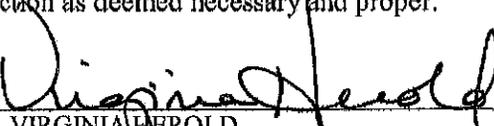
3 17. While en route, the officers observed the suspect vehicle pulling into the underground
4 garage at 7235 Charmant Drive, San Diego, California. The officers stopped the vehicle in the
5 underground garage and detained the occupant (Respondent). The RP was brought to the scene
6 and the RP positively identified Respondent as the person who had pointed a firearm at him.
7 Officers found a black semi-automatic Hi-Point firearm under the driver's seat of Respondent's
8 vehicle. Respondent was arrested and transported to the county jail where he was booked.

9 **PRAYER**

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

- 12 1. Revoking or suspending Pharmacy Technician Registration Number TCH 107183
13 issued to Rian Robert Hoover;
- 14 2. Ordering Rian Robert Hoover to pay the Board of Pharmacy the reasonable costs of
15 the investigation and enforcement of this case, pursuant to Business and Professions Code section
16 125.3;
- 17 3. Taking such other and further action as deemed necessary and proper.

18 DATED: 10/21/13

19 
20 VIRGINIA HEROLD
21 Executive Officer
22 Board of Pharmacy
23 Department of Consumer Affairs
24 State of California
25 Complainant

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