

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

In the Matter of the Accusation Against:

VINCENT VAILANKANNI COUTINHO
2126 28TH St., Apt. 2
Sacramento, CA 95818

Pharmacy Technician Registration Number
TCH 106592

Respondent.

Case No. 4883

OAH No. 2013100629

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to the caption box on page one:

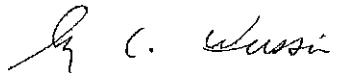
"Pharmacy Technician Registration Number TCH 106592"

The technical change made above does not affect the factual or legal basis of the Proposed Decision, which shall become effective on December 3, 2014.

IT IS SO ORDERED this 3rd day of November, 2014.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STAN C. WEISSER
Board President

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

In the Matter of the Accusation Against:

VINCENT VAILANKANNI COUTINHO

Pharmacy Technician Registration Number
THC 106592

Respondent.

Case No. 4883

OAH No. 2013100629

PROPOSED DECISION

This matter was heard before Marcie Larson, Administrative Law Judge, Office of Administrative Hearings, State of California, on September 4, 2014, in Sacramento, California.

Stephanie Alamo-Latif, Deputy Attorney General, represented complainant Virginia Herold, Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Vincent Vailankanni Coutinho (respondent) appeared and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 4, 2014.

FACTUAL FINDINGS

1. On February 1, 2011, the Board issued to respondent Original Pharmacy Technician Registration Number TCH 106592 (license). The license will expire on September 30, 2014, unless renewed or revoked.

2. On September 19, 2013, complainant, acting solely in her official capacity as the Executive Officer of the Board, signed and filed the Accusation. Complainant seeks to discipline respondent's license based upon his criminal convictions and his dangerous consumption of alcohol. Specifically, complainant alleges that respondent has five alcohol-related criminal convictions.

3. Respondent timely filed a Notice of Defense, pursuant to Government Code section 11506. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

Criminal Convictions

2002 ALCOHOL-RELATED RECKLESS DRIVING CONVICTION

4. On August 19, 2002, in the Superior Court, County of Sacramento, respondent was convicted of reckless driving while under the influence of alcohol, a violation of Vehicle Code section 23103.5, a misdemeanor. Respondent was sentenced to seven days in jail and placed on three years of probation. He was also ordered to pay fines, fees and restitution. Respondent was not ordered to complete any alcohol-related program.

5. Respondent's conduct that gave rise to the conviction occurred on or about May 8, 2002. At hearing, respondent testified that he could not recall the circumstances of his arrest for reckless driving, other than he was at a friend's house drinking alcohol and he drove home.

2003 DUI CONVICTION

6. On June 10, 2003, in the Superior Court, County of Sacramento, respondent was convicted of driving under the influence of alcohol (DUI), a violation of Vehicle Code section 23152, subdivision (a), a misdemeanor. Respondent's conviction was a violation of his probation. He was sentenced to 20 days in jail and placed on four years of probation. He served one week of his jail time. He was also ordered to pay fines, fees and restitution. Respondent was not ordered to complete any alcohol-related program.

7. Respondent's conduct that gave rise to the conviction occurred on February 13, 2003. There was no evidence presented regarding the circumstances of his arrest for DUI.

2004 DUI CONVICTION

8. On August 12, 2004, in the Superior Court, County of Sacramento, respondent was convicted of DUI with a blood alcohol level (BAC) of .08 percent or higher, a violation of Vehicle Code section 23152, subdivision (b), a misdemeanor. Respondent's conviction was a violation of his probation. He was sentenced to 210 days in jail and five years of probation. He was also ordered to pay fines, fees and restitution.

9. Respondent's arrest for DUI occurred on July 4, 2003. However, he "skipped town" and was not convicted of DUI until over a year later. There was no evidence presented regarding the circumstances of his arrest.

2012 DUI CONVICTIONS

10. On February 29, 2012, in the Superior Court, County of Sacramento, respondent was convicted, on his plea of nolo contendere, of two violations of DUI with a blood alcohol level (BAC) of .08 percent or higher, violations of Vehicle Code section 23152, subdivision (b), with an enhancement for three prior DUI violations within the proceeding ten years.¹ Both violations were felonies. The first count was related to a July 23, 2011 DUI arrest. The second count was related to an October 2, 2011 DUI arrest.

Respondent was sentenced to serve 16 months in jail. After his release from jail, respondent was placed on formal probation for approximately 18 months. Respondent was ordered to enroll in and complete an Alcohol and Drug Rehabilitation Program. He was ordered to pay fines, fees and restitution. Respondent was also ordered to install an ignition interlock device in his vehicle; which was to remain in his vehicle for three years. Respondent served eight months in jail. He was released from probation in February 2014.

11. The circumstances of respondent's July 23, 2011 arrest are that at approximately 4:17 a.m. two California Highway Patrol (CHP) officers were traveling on 22nd Street and L Street in downtown Sacramento, when they observed a vehicle driven by respondent fail to stop behind the white line at a stop sign. The officers initiated an enforcement stop. An officer approached respondent's vehicle and spoke with respondent. The officer observed that respondent's eyes were bloodshot and watery and he could smell the odor of an alcoholic beverage on his breath. The officer instructed respondent to exit his vehicle. The officer asked respondent if he had any alcohol to drink. Respondent stated that he did not. The officer administered a series of Field Sobriety Tests (FST), which respondent failed. Respondent was placed under arrest for DUI. His BAC measured .17 percent.

12. There was no evidence presented regarding the circumstances of respondent's October 2, 2011 arrest. Respondent testified that he is not sure why he drank alcohol and drove his vehicle.

Respondent's Evidence

13. Respondent is 38 years old. Respondent testified that when he received his first three alcohol-related convictions, he did not care. He was "young and foolish." Everything changed for respondent when he received his felony convictions and was sentenced to serve time in jail. He testified that cried "the whole time" he was in jail. Respondent never wants to go back to jail again.

¹ The Accusation alleges a conviction date of January 12, 2012. Respondent's plea was entered on this date. However, on February 29, 2012, the order was entered and sentencing occurred.

14. After respondent was released from jail he completed the court-ordered MADD Victim Impact Panel presentation. He also attended court-ordered individual and group alcohol counseling, which he completed in February 2014. Respondent also attended anger-management counseling for a short period of time, to learn how to deal with anger and disappointment. He did not continue the counseling because of the expense.

15. Respondent testified that he learned "the hard way" that he has a problem with alcohol. He no longer has the urge to drink alcohol. Respondent has been sober since May 31, 2012. In May 2014, respondent began attending Alcoholic Anonymous (AA) meetings two or three times per week. He intends to participate in AA for the rest of his life. He has a sponsor whom he met in jail. Respondent completed the first three steps of the AA 12-step program. He is working on step four, but could not recall what the step entails.

16. After his release from jail respondent could not find a job for three years, because of his felony convictions. He could not pass a background check. On July 21, 2014, respondent's misdemeanor convictions were expunged pursuant to Penal Code section 1203.4 and the felony convictions were reduced to misdemeanors and dismissed pursuant to Penal Code section 1203.41.

17. Shortly after respondent's criminal convictions were expunged, he was hired by Maximus, a healthcare call center that provides individuals with information concerning Medi-cal. Respondent has never worked as a pharmacy technician. He would like maintain his license so that he can volunteer at a pharmacy to gain experience.

18. Respondent lives with his girlfriend. She does not drink alcohol. Respondent spends his free time with his family. He attends church on Sundays with his parents. Respondent testified that he had the support of his family in the past, but he did not care. Now he does. Respondent has a better understanding of himself and what he wants for the future. He would like to get married and buy a house. He would like a second chance to be successful.

Discussion

19. The determination whether to discipline a license should be made only after consideration of the conduct of the licensee and consideration of any factors introduced in justification, mitigation, aggravation and rehabilitation. The licensee "should be permitted to introduce evidence of extenuating circumstances by way of mitigation or explanation, as well as any evidence of rehabilitation." (*Arneson v. Fox* (1980) 28 Cal.3d 440, 449; *Brandt v. Fox* (1979) 90 Cal.App.3d 737, 747.) In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth the following criteria for evaluating the rehabilitation of a licensee when considering the suspension or revocation of a license based upon a conviction:

- (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 any or 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.

Applying the rehabilitation criteria, in the last 10 years respondent had five alcohol-related convictions. The two most recent incidents that resulted in felony convictions occurred within three months of each other. One of the incidents involved a high BAC. As a result of respondent's felony convictions, he spent eight months in jail.

Respondent has undertaken some important steps towards recovery. He completed the court-imposed alcohol programs. He recently began attending AA meetings. He appears to be committed to his recovery. However, he offered no evidence from any family, friends, doctors, counselors, or employers attesting to his rehabilitation. Additionally, it has been less than one year since he was released from probation. As a result, there has been an insufficient amount of time to evaluate his rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [a full and accurate analysis of one's rehabilitation requires a period of analysis during which he is not on probation or parole].)

Respondent's repeated decision to drink and drive over the last ten years has placed the public in danger. The objective of an administrative proceeding relating to licensing is to protect the public. Such proceedings are not for the primary purpose of punishment. (See *Fahmy v. MBC* (1995) 38 Cal.App.4th 810, 817.) The Board must be assured that respondent can exercise good judgment and that he will not pose a threat to the health, safety, or welfare of the public. Respondent must demonstrate a sustained commitment and focused effort to address his recovery from alcoholism and any underlying issue that may be at the root of his alcoholism. As a result, when all the facts and circumstances are considered, it would be contrary to the public interest to allow respondent to remain licensed at this time.

Costs

20. Business and Professions Code section 125.3 provides, in pertinent part, that the Board may request the Administrative Law Judge to direct a licensee found to have committed violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case. Complainant submitted in evidence a certification of costs from the Deputy Attorney General which established the costs of prosecution and investigation in the sum of \$3,302.50.

21. As set forth in Legal Conclusion 11, the Board's request that respondent reimburse \$3,302.50 for its legal costs is reasonable. However, based on respondent's current financial situation, respondent will not be required to pay these costs until he seeks reinstatement of his license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4300 provides that the Board may suspend or revoke any license.

2. The standard of proof in an administrative disciplinary action seeking the suspension or revocation of a professional license is "clear and convincing evidence." (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) "Clear and convincing evidence" requires a finding of high probability. It must be sufficiently strong to command the unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189.)

3. Business and Professions Code section 4301 provides that the Board shall take action against any holder of a license who is guilty of unprofessional conduct, including the following:

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, 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.

[¶] ... [¶]

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

[¶] ... [¶]

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

[¶] ... [¶]

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

4. As set forth in Factual Findings 4 through 12, cause to discipline respondent's license exists under Business and Professions Code section 4301, subdivision (h). On May 8, 2002, February 13, 2003, July 4, 2003, July 23, 2011 and October 2, 2011, respondent used alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself and the public.

5. As set forth in Factual Findings 4 through 12, cause to discipline respondent's license exists under Business and Professions Code section 4301, subdivision (k). Respondent was convicted of three misdemeanors and two felonies involving the use of alcohol.

6. California Code of Regulations, title 16, section 1770, provides in pertinent part that:

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

7. Respondent's alcohol-related convictions are substantially related to the qualifications, functions and duties of a pharmacy technician. As the court explained in *Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal. App.4th 757, 770, "Driving while under the influence of alcohol ... shows an inability or unwillingness to obey the legal prohibition against drinking and driving and constitutes a serious breach of a duty owed to society."

8. As set forth in Factual Findings 4 through 12, cause to discipline respondent's license exists under Business and Professions Code section 4301, subdivision (l). Respondent was convicted of crimes that are substantially related to the qualifications, functions and duties of a licensed Pharmacy Technician.

9. As set forth in Factual Findings 4 through 12, cause to discipline respondent's license exists under Business and Professions Code section 4301, subdivision (o). Respondent's criminal convictions violated provisions of the Pharmacy Law, Business and Professions Code section 4000 et seq.

10. As set forth in Factual Findings 13 through 19, while respondent submitted some evidence of rehabilitation, he did not establish that he was sufficiently rehabilitated to remain licensed at this time.

Costs

11. Pursuant to Business and Professions Code section 125.3, a licensee found to have violated a licensing act may be ordered to pay the reasonable costs of investigation and prosecution of a case. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth factors to be considered in determining the reasonableness of the costs sought pursuant to statutory provisions like Business and Professions Code section 125.3. These factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate in light of the alleged misconduct.

Complainant seeks \$3,302.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable. However, because respondent was unemployed for three years and recently began working again, he should be allowed to pay these costs if his license is reinstated.

Conclusion

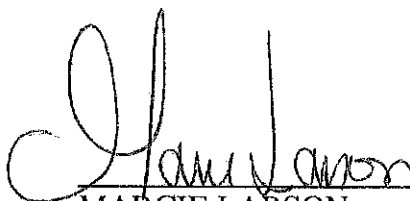
12. When considering the Factual Findings and Legal Conclusions as a whole, in order to ensure that the public health, safety and welfare are adequately protected, respondent's license must be revoked.

ORDER

1. Pharmacy Technician Registration Number THC 106592 issued to Vincent Vailankanni Coutinho is REVOKED.

2. In the event that respondent applies for reinstatement of his license, he shall pay to the Board the costs of investigation and prosecution of this matter, in the amount of \$3,302.50, in such manner as the Board directs.

DATED: October 2, 2014



MARCIE LARSON

Administrative Law Judge

Office of Administrative Hearings

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

12 In the Matter of the Accusation Against:

Case No. 4883

13 **VINCENT VAILANKANNI COUTINHO**
10129 Country Way
14 Sacramento, CA 95827

ACCUSATION

15 **Pharmacy Technician Registration Number**
TCH 106592

16 Respondent.
17

18
19 Virginia Herold ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Pharmacy, Department of Consumer Affairs.

23 2. On or about February 1, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 106592 to Vincent Vailankanni Coutinho ("Respondent"). The
25 Pharmacy Technician Registration was in full force and effect at all times relevant to the charges
26 brought herein and will expire on September 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. Code section 4300 states, in pertinent part, that every license issued may be suspended
6 or revoked.

7 5. Code section 4300.1 states:

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

13 **STATUTORY PROVISIONS**

14 6. Code section 4301 states, in pertinent part:

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

17 ...

18 (h) The use alcoholic beverages to the extent or in a manner as to be dangerous or injurious
19 to oneself, or to any other person or to the public, or to the extent that the use impairs the ability
20 of the person to conduct with safety to the public the practice authorized by the license.

21 ...

22 "(k) The conviction of more than one misdemeanor or any felony involving the use,
23 consumption, or self-administration of any dangerous drug or alcoholic beverage, or any
24 combination of those substances."

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

27 ...

1 to perform as instructed. Respondent was arrested for driving under the influence violation of
2 Vehicle Code section 23152, subdivision (a) (DUI of Alcohol or Drugs) and Vehicle Code section
3 23152, subdivision (b) (DUI with .08% or higher BAC). Respondent's BAC was .18% at the time
4 of his arrest on July 23, 2011.

5 (b) On or about October 2, 2011, an Elk Grove Police Officer observed Respondent
6 driving a motor vehicle in a public roadway and crash into a parked vehicle. Upon contact, the
7 officer observed that Respondent had a strong odor of alcoholic beverage emitting from his
8 person. Respondent refused standard field sobriety tests. A records check revealed that
9 Respondent was on DUI probation, and had a suspended driver's license and an outstanding
10 warrant. Respondent was arrested for violation of Vehicle Code section 23152, subdivision (a)
11 (DUI of Alcohol or Drugs), Vehicle Code section 23152, subdivision (b) (DUI with .08% BAC or
12 higher), and Vehicle Code section 23154, subdivision (a) (DUI while on probation). Respondent's
13 BAC was .19% at the time of his arrest on October 2, 2011.

14 **2002 Prior Conviction**

15 9. On or about August 19, 2002, in Sacramento County Superior Court Case Number
16 02T02353, Respondent was convicted of violation of Vehicle Code section 23103.5 (Reckless
17 Driving with Alcohol). Respondent's Blood Alcohol Content (BAC) was .15% at the time of his
18 arrest on May 8, 2002. He was sentenced to three years probation, 7 days in jail, and ordered to
19 pay fines and fees.

20 **2003 Prior Conviction**

21 10. On or about June 10, 2003, in Sacramento County Superior Court Case Number
22 03M02985, Respondent was convicted of violation of Vehicle Code section 23152, subdivision (a)
23 (Driving Under the Influence (DUI) of Alcohol or Drugs). Respondent's BAC was .21% at the
24 time of his arrest on February 13, 2003. He was sentenced to four years probation, 20 days in jail,
25 and ordered to pay fines and fees.

26 **2004 Prior Conviction**

27 11. On or about August 12, 2004, in Sacramento County Superior Court Case Number
28 03T04212, Respondent was convicted of violation of Vehicle Code section 23152, subdivision (b)

1 (DUI with .08% BAC or higher). Respondent's Blood Alcohol Content (BAC) was .11% at the
2 time of his arrest on July 4, 2003. He was sentenced to five years probation, 210 days in jail, and
3 ordered to pay fines and fees.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Dangerous Use of Alcohol)**

6 12. Respondent is subject to discipline under Code section 4301, subdivision (h), on the
7 grounds of unprofessional conduct, in that on or about May 8, 2002, February 13, 2003, July 4,
8 2003, July 23, 2011, and October 2, 2011, Respondent used alcoholic beverages to an extent or in
9 a manner dangerous or injurious to himself and the public when he drove a vehicle with a BAC of
10 .08% or higher, as more particularly set forth above in paragraphs 8 through 11, and their
11 subparts.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Conviction of More than one Misdemeanor or any Felony Involving the Use or**
14 **Consumption of Alcoholic Beverage)**

15 13. Respondent is subject to discipline under Code section 4301, subdivision (k), for
16 unprofessional conduct, in that on or about August 19, 2002, June 10, 2003, August 12, 2004, and
17 January 12, 2012, Respondent was convicted of misdemeanors and felonies involving the use and
18 consumption of alcoholic beverages, as more particularly set forth above in paragraphs 8 through
19 11.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Violation of the Laws of Pharmacy)**

22 14. Respondent is subject to discipline under Code section 4301, subdivision (o), in that
23 Respondent violated the laws and regulations governing pharmacy, as set forth above in
24 paragraphs 8 through 13.

25 **PRAYER**

26 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Board of Pharmacy issue a decision:
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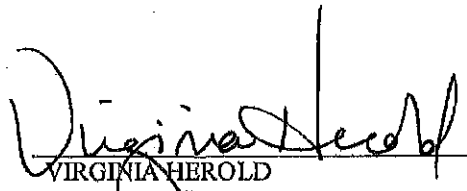
1 1. Revoking or suspending Pharmacy Technician Registration Number TCH 106592,
2 issued to Vincent Vailankanni Coutinho

3 2. Ordering Vincent Vailankanni Coutinho to pay the Board of Pharmacy the reasonable
4 costs of the investigation and enforcement of this case, pursuant to Business and Professions Code
5 section 125.3;

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

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DATED: 9/19/13



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

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