

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

In the Matter of the Accusation Against:

MATTHEW JAMES VEINTIMILLA,
Intern Pharmacist License No. INT 21434

Respondent.

Case No. 4999

OAH No. 2014080669

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 4, 2015.

It is so ORDERED on August 5, 2015.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

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PROPOSED DECISION

John E. DeCure, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on June 2, 2015, in Los Angeles.

Michael Brown, Deputy Attorney General, represented Virginia K. Herold (Complainant), Executive Officer of the Board of Pharmacy (Board), Department of Consumer Affairs.

Respondent Matthew James Veintimilla (Respondent) appeared on his own behalf.

Evidence was taken and argument was heard. The record was closed and the matter was submitted on June 2, 2015.

FACTUAL FINDINGS

Jurisdiction

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

2. The Board issued Original Intern Pharmacist Registration Number INT 21434 to Respondent on October 6, 2010. The license expired on June 27, 2013 and was cancelled on July 9, 2013. Pursuant to Business and Professions Code section 118, subdivision (b), the expiration and cancellation of Respondent's license does not deprive the Board of jurisdiction to proceed with this disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

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Respondent's Criminal Convictions

3(a). On August 16, 2013, Respondent was convicted in the Superior Court of California, Kern County, in Case No. BM817669A, upon a plea of no contest, of one count of violating Vehicle Code section 23152, subdivision (a) (driving under influence of alcohol (DUI)), and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater), both misdemeanors (collectively, the first DUI conviction). The court found a factual basis for, and accepted, the plea. The court suspended imposition of sentencing and ordered Respondent to serve 150 days in jail, complete 52 weeks of alcohol counseling, and pay various fines and fees. The court further placed Respondent on three years' summary probation with terms and conditions.

3(b). The facts and circumstances surrounding the first DUI conviction involved a February 2, 2013 California Highway Patrol officer's response to a radio call of a possible DUI driver driving southbound on the wrong side of Renfro Road in Bakersfield. The officer proceeded to the scene and observed Respondent's car parked on a western dirt shoulder of Renfro Road, bordering the northbound lane of traffic. Respondent was observed to have signs of intoxication including the odor of an alcoholic beverage coming from within his car as well as on his breath, and bloodshot eyes. Respondent stumbled and nearly fell down when he exited his car to take a field sobriety test, which he was unable to satisfactorily perform.

4(a). On August 16, 2013, Respondent was convicted in the Superior Court of California, Kern County, in Case No. BM819026A, upon a plea of no contest, of one count of violating Vehicle Code section 23152, subdivision (a) (driving under influence of alcohol (DUI)), and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater), both misdemeanors (collectively, the second DUI conviction). The court found a factual basis for, and accepted, the plea. The court suspended imposition of sentencing and ordered Respondent to serve 150 days in jail, complete 52 weeks of alcohol counseling, and pay various fines and fees. Due to his multiple DUI convictions, Respondent's California Driver's License was revoked by the Department of Motor Vehicles pursuant to Vehicle Code section 13352, subdivision (a)(5). The court thereby advised Respondent to complete the 18-month Senate Bill 38 DUI program in order to become eligible for reinstatement of his Driver's License. The court further placed Respondent on three years' summary probation with terms and conditions.

4(b). The facts and circumstances surrounding the second DUI conviction involved a February 13, 2013 California Highway Patrol officer's response to a radio call that a traffic collision with property damage had occurred. The officer arrived at the scene of the collision and observed Respondent to have signs of intoxication including slow, slurred speech. Respondent admitted that he had been driving during the collision and that he had previously consumed four 12-ounce beers. He also was unable to satisfactorily perform a field sobriety test. Respondent submitted to two consecutive

breathalyzer tests, resulting in BAC-content readings of 0.151 percent and 0.154 percent.

5(a). On August 16, 2013, Respondent was convicted in the Superior Court of California, Kern County, in Case No. BM819413A, upon a plea of no contest, of one count of violating Vehicle Code section 23152, subdivision (a) (driving under influence of alcohol (DUI)), and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater), both misdemeanors (collectively, the third DUI conviction). The court found a factual basis for, and accepted, the plea. The court suspended imposition of sentencing and ordered Respondent to serve 150 days in jail,¹ complete 52 weeks of alcohol counseling, and pay various fines and fees. The court further placed Respondent on three years' summary probation with terms and conditions.

5(b). The facts and circumstances surrounding the third DUI conviction involved a March 10, 2013 incident in which a California Highway Patrol officer observed Respondent driving his car with a left front spare tire that was flat. The officer stopped Respondent and asked for his driver's license, proof of insurance, and vehicle registration, none of which Respondent produced. The officer observed Respondent to have signs of intoxication and asked if he had consumed alcoholic beverages before driving. Respondent admitted that he had consumed three beers prior to driving. He also was unable to satisfactorily perform a field sobriety test. Respondent submitted to two consecutive breathalyzer tests, resulting in BAC-content readings of 0.15 percent and 0.14 percent. Respondent further submitted to a blood test to measure BAC, which resulted in a BAC level of 0.15 percent.

6(a). On August 16, 2013, Respondent was convicted in the Superior Court of California, Kern County, in Case No. BM819857A, upon a plea of no contest, of one count of violating Vehicle Code section 23152, subdivision (a) (driving under influence of alcohol (DUI)), and one count of violating Vehicle Code section 23152, subdivision (b) (driving with a blood alcohol content (BAC) of 0.08 percent or greater) (collectively, the fourth DUI conviction), both misdemeanors. Respondent was further convicted, upon a plea of no contest, of one misdemeanor count of violating California Penal Code section 594, subdivision (b)(1) (vandalism, property damage of \$400 or more), one misdemeanor count of violating Penal Code section 148, subdivision (a)(1) (obstructing or resisting a peace officer or emergency medical technician), and one misdemeanor count of violating Penal Code section 241, subdivision (c) (assault on a peace officer or firefighter). The court found a factual basis for, and accepted, the plea. The court sentenced Respondent to serve 730 days in county jail and pay various fines and fees, and placed Respondent on three years' summary probation with terms and conditions.

¹ Respondent's three 150-day jail sentences, which the court ordered for the first, second, and third DUI convictions, were to run concurrently.

6(b). The facts and circumstances surrounding the convictions for vandalism, obstruction, and assault, involved a March 25, 2013 incident in which Bakersfield Police Department officers responded to simultaneous reports of a hit-and-run traffic accident and a forced entry into a person's residence. When officers arrived at the residence they heard loud crashing noises and noticed that a decorative window was shattered and the front door was wide open. Respondent was standing in the window space. The officers instructed Respondent to exit the residence, but Respondent kicked at the window with his left foot and went farther inside the residence until he found a closed bathroom door. Respondent then yelled, "Come out of there and open the door, I know you're in there!" The officers feared that Respondent might force open the bathroom door and assault the female resident who was locked inside. When they attempted to arrest Respondent, he resisted and fought with them until he was physically subdued.

6(c). Regarding the fourth DUI, the facts and circumstances arose from the March 25, 2013 forced-entry incident described above. As part of the police investigation into the hit-and-run traffic accident, an officer observed Respondent's car parked outside the residence. The officer noted that the car had front-end damage, vomit on the driver's seat, and the car keys left in the ignition. Paint transfer from both Respondent's car and the hit-and-run victim's car was noted on both cars. A mailbox partially made of brick had also been destroyed in the accident, and brick fragments matching the destroyed mailbox were found on Respondent's car. Respondent showed signs of intoxication including bloodshot eyes, slurred speech and the odor of alcoholic beverages on his breath. Respondent admitted to having consumed "a few beers" and was unable to satisfactorily perform a field sobriety test. Respondent submitted to a breathalyzer test, resulting in a BAC-content reading of 0.13 percent.

7. Richard Iknoian, a registered pharmacist in California and Nevada and a Board of Pharmacy Inspector since 2001 (Inspector Iknoian), testified credibly at the administrative hearing about the investigation he performed in this case and gave his expert opinion regarding whether Respondent's convictions are substantially related to the qualifications, functions and duties of an intern pharmacist. Regarding an intern pharmacist's duties, Inspector Iknoian stated that an intern pharmacist can perform the work of a pharmacist and will often be expected to work alone, so the level of responsibility is high. Because the work of an intern pharmacist involves dispensing controlled substances to medical patients, the intern pharmacist must be moral, ethical, use excellent judgment, and display the reliability of a professional person dedicated to patient care. Inspector Iknoian opined that Respondent's convictions are significantly and directly related to his responsibilities as an intern pharmacist because they show irresponsibility and a profound lack of judgment, thereby raising a serious issue of public protection.

8. During his investigation, Inspector Iknoian learned that Respondent was enrolled as a pharmacy student in the Pharmacy School at the University of the Pacific (Pacific) in Stockton, California, at the time of the incidents leading to the convictions. Respondent was discharged and terminated from Pacific in May of 2013 due to his

alleged pre-conviction criminal misconduct and because he had exceeded the five-year time limit the program requires for a student to complete a pharmacy degree. (Exhibit 14.)

9. Respondent testified that he has a history of major depression and took antidepressant medications for this condition for years. He described his pharmacy studies as being grueling and arduous. He suffers from self-diagnosed Attention Deficit Hyperactive Disorder (ADHD), which makes studying more challenging. During his third year of course work he temporarily dropped out of Pacific's pharmacy program. Also, while studying at Pacific during 2011, he suffered an episode of drug-induced psychosis and had to take a mental-health leave of absence. He began his residency program in the fall of 2012 and was required to work between 60 and 80 hours per week, which was very difficult. He failed an ambulatory care rotation and had to retake it. Respondent stated that despite his problems as a pharmacy student, he is not an alcoholic, nor does he have a prior history of alcohol use. He stated that he was essentially self-medicating with alcohol during February and March of 2013 in order to deal with the sense of shock and tremendous distress he felt due to the January 7, 2013 suicide of his best friend.

10. Respondent testified that he has not consumed alcohol since his 2013 DUI incidents and has no craving for alcohol. He is currently in weekly individual therapy and weekly group "cognitive behavior" therapy, and his depression is under control. His treating psychiatrist, Michelle Tawa, M.D., submitted a summary of care letter describing Respondent's psychiatric treatment to date. (Exhibit A.) Dr. Tawa confirmed Respondent's diagnosis of major depressive disorder, recurrent, with a history of alcohol use disorder "which at the present time is not active." Respondent has attended appointments regularly and adhered to his treatment plan, which involves cognitive behavior group therapy and individual psychotherapy. His antidepressant medications consist of Wellbutrin and citalopram. He also takes propranolol (a beta blocker) and diphenhydramine (an antihistamine). Dr. Tawa further noted that although Respondent "continues to experience residual symptoms of depression, anxiety, and insomnia, many symptoms have diminished."

11. Respondent openly admitted to using poor judgment in the acts that led to his convictions. He was "thankful" that he was jailed as a result of the crimes and further stated, "Thank God I didn't kill anyone, or myself." He had no recollection of resisting police arrest on March 25, 2013, at the residence of a female acquaintance, as he had "blacked out" due to excessive alcohol consumption.

12. Respondent's admissions of culpability and his plain-stated remorse for his misconduct were offset by his claim that in February and March of 2013, he had attempted to engage in a form of responsible alcohol abuse. According to Respondent, he had limited his alcohol consumption during that time to weekends only, when he was not working as an intern pharmacist, so that the drinking would not affect his work. This contention was not credible. The Administrative Law Judge takes official notice

that of the four days in 2013 that Respondent sustained DUI arrests, two were weekdays. The second DUI occurred on February 13, 2013, a Wednesday, while March 25, 2013, the day Respondent “blacked out,” crashed into another victim’s car and mailbox, broke into an apartment, and sustained his fourth DUI arrest, fell on a Monday.

13. Respondent is still on criminal probation. He is in compliance with all of the terms and conditions of probation. Respondent’s California Driver’s License remains revoked. He has not completed the 18-month DUI program required for reinstatement of a driver’s license pursuant to Senate Bill 38, preferring instead to use public transportation or a bicycle. His three-year probationary period is due to expire on August 25, 2016.

Mitigation, Rehabilitation, and Findings Pertinent to Discipline

14. Respondent’s period of excessive alcohol abuse was of short duration and appears limited to the intense grief and depression he experienced as a result of his friend’s suicide. Respondent has no previous, or subsequent, history of alcohol abuse or arrests.

15. Respondent is learning about the insurance industry and would like to become licensed to sell life, accident, and health insurance. He states that he is “moving forward” and believes that his depression is well-controlled. Although Respondent is unemployed, he still attempts to keep up-to-date with pharmacy medicine by studying on his own. He is doubtful that he could finish the pharmacy program at Pacific because to do so, he would have to pay the school \$45,000 in tuition debt and also persuade a former professor to change a failing grade he gave to Respondent into a passing grade.

Cost of Enforcement

16. The Board incurred enforcement costs, in the form of Attorney General fees, in the amount of \$5,255.² Those costs were reasonably incurred.

17. Respondent testified credibly that paying full costs would be a financial hardship, in view of his unemployment.

² Complainant anticipated that the Board would incur additional attorney’s fees prior to the commencement of hearing, in the approximate amount of \$340. (Ex. 3.) Business and Professions Code section 125.3, subdivision (c), allows a good faith estimate of costs to be used “where actual costs are unavailable.” Complainant did not establish why it could not submit evidence of actual additional costs at hearing. Without such evidence, an award of anticipated costs must be disallowed.

LEGAL CONCLUSIONS

The Standard of Proof

1. The practice of pharmacy, like the practice of medicine, is a profession. *Vermont & 110th Medical Arts Pharmacy v. Board of Pharmacy* (1981) 125 Cal.App.3d 19, 25. In California, intern pharmacists perform the duties and responsibilities of pharmacists and are highly trained. Pursuant to Business and Professions Code (Code) section 4114, subdivision (a), an intern pharmacist “may perform all functions of a pharmacist” at the discretion of, and under the supervision of, a licensed pharmacist. An intern pharmacist is thereby the holder of a professional license. 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, 856.

2. The key element of “clear and convincing evidence” is that it must establish a high probability of the existence of the disputed fact, greater than proof by a preponderance of the evidence. Evidence of a charge is clear and convincing so long as there is a “high probability” that the charge is true. *People v. Mabini* (2001) 92 Cal.App.4th 654, 662.

3. The Board met its burden of proving its case by clear and convincing evidence.

Applicable Authority

4. Code section 490 states that a board may suspend or revoke a license on the ground that a licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the profession for which the license was issued.

5. Code section 4301 provides that the Board may take action against a licensee for unprofessional conduct, which includes 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)), the conviction of more than one misdemeanor involving the use, consumption, or self-administration of any alcoholic beverage (Code § 4301, subd. (k)), the conviction of a crime substantially related to the qualifications, functions, and duties of a licensee (Code § 4301, subd. (l)), violating or attempting to violate, directly or indirectly, any provision or term of the Pharmacy Law (Code § 4301, subd. (o)), and actions or conduct that would have warranted denial of a license (Code § 4301, subd. (p)).

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

“For the purpose of denial, suspension, or revocation of a personal . . . license . . . a crime or act shall be considered substantially related to the qualifications, functions, or duties of a licensee . . . if to a substantial degree it evidences present or potential unfitness of a licensee to perform the functions authorized by his license . . . in a manner consistent with the public, health, safety, or welfare.”

Cause for Discipline

7. Cause exists to discipline Respondent's intern pharmacist license under Business and Professions Code section 4301, subdivision (h), on the grounds that Respondent administered to himself alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself, or to any other person or the public, as set forth in Factual Findings 3 through 6, and Legal Conclusions 4 through 6. By operating a motor vehicle on four occasions while legally drunk, Respondent placed not only his own life in danger, but he endangered innocent citizens and in one instance, law enforcement personnel who had responded to the scene of Respondent's forced entry into a residence. As Respondent correctly stated when testifying, he was "lucky" he didn't kill himself or anyone else when committing these acts.

8(a). Cause exists to discipline Respondent's intern pharmacist license under Business and Professions Code sections 490 and 4301, subdivision (l), on the grounds that Respondent has been convicted of crimes that are substantially related to the qualifications, functions, and duties of an intern pharmacist, as set forth in Factual Findings 3 through 7, and Legal Conclusions 4 through 6. Respondent's convictions are substantially related to the qualifications, functions, and duties of an intern pharmacist.

8(b). Respect for human life and compliance with the law are paramount for intern pharmacists, 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 that access and that information. Respondent's multiple crimes of driving under the influence of alcohol, driving with a BAC exceeding 0.08 percent, his hit-and-run accidents, and his crimes of vandalism and resisting arrest while "blacked out" due to excessive alcohol consumption, demonstrate a lack of respect for human welfare and a willingness to flout the law. Despite the relatively short time-span during which he committed these crimes and his explanation that during that time he was self-medicating due to his grief and depression over a close friend's suicide, Respondent's criminal misconduct was extensive, causing significant physical damage to the cars and property of innocent victims. Respondent further broke into a residence by physical force, cornered a victim in a locked bathroom, and fought with law enforcement personnel who attempted to come to the victim's aid. Such criminal behavior evidences a potential unfitness to perform the functions of an intern pharmacist in a manner consistent with the public health, safety, and welfare.

9. Cause exists to discipline Respondent's intern pharmacist license under Business and Professions Code section 4301, subdivision (o), on the grounds that Respondent violated or attempting to violate, directly or indirectly, provisions or terms of the Pharmacy Law as set forth in Factual Findings 3 through 6, and Legal Conclusions 4 through 6.

10. Cause exists to discipline Respondent's intern pharmacist license under Business and Professions Code section 4301, subdivision (p), on the grounds that

Respondent's actions and conduct would have warranted denial of a license, as set forth in Factual Findings 3 through 6, and Legal Conclusion 6.

11. Under Business and Professions Code section 125.3, Complainant is entitled to the recover reasonable costs of the investigation and prosecution of this matter in the amount of \$5,255, as set forth in Factual Finding 16.

12(a). Under California Code of Regulations, title 16, section 1769, subdivision (c):

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.

12(b). Respondent's multiple crimes demonstrate a lack of respect for human welfare and a willingness to flout the law. This raises serious concern about continuing to allow Respondent to act in a position of trust as an intern pharmacist, although that concern is mitigated to an extent by the fact that Respondent has committed no similar offenses before or since he committed the crimes. A mental health professional also attested to Respondent's lack of an ongoing alcohol use disorder. However, the likelihood of Respondent reacting similarly to a future setback in his personal life in the manner he did when his friend committed suicide in 2013 is totally unknown, as no evidence was provided to ensure that such behavior would not be repeated. Additionally, Respondent's criminal convictions are about two years old and he is currently serving a three-year probationary period. Respondent's good behavior while on probation may not be used to establish rehabilitation. (*In re Gossage* (2000) 23 Cal.4th 1080.) Sufficient time must pass after Respondent's criminal probation has ended for the Board to be able to assess whether Respondent is rehabilitated. Consequently, probation in this matter would not be appropriate and would not ensure adequate public protection.

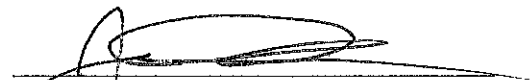
13. Given the foregoing, revocation of Respondent's intern pharmacist license is warranted in order to protect the public health, safety, and welfare.

ORDER

1. Intern Pharmacist License Number INT 21434, issued to Respondent Matthew James Veintimilla, is hereby revoked.

2. If Respondent later applies for a new intern pharmacy license or reinstatement of his revoked license, Respondent shall reimburse the Board \$5,255 for its prosecution and investigation costs in this case, prior to reinstatement or issuance of any intern pharmacist license, and in accordance with a Board-approved payment plan, or as the Board in its discretion may otherwise order.

DATED: July 2, 2015



JOHN E. DeCURE
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Accusation Against:

Case No. 4999

12 **MATTHEW JAMES VEINTIMILLA**
2451 W. 248th Street
13 Lomita, CA 90717

ACCUSATION

14 **Intern Pharmacist License No. 21434**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 6, 2007, the Board of Pharmacy issued Intern Pharmacist
22 License Number 21434 to Matthew James Veintimilla (Respondent). The Intern Pharmacist
23 License was cancelled on June 27, 2013, and has not been renewed.

24 **JURISDICTION**

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

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1 4. Section 490 of the Code states:

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

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

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

16 "(d) The Legislature hereby finds and declares that the application of this section has been
17 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
18 554, and that the holding in that case has placed a significant number of statutes and regulations
19 in question, resulting in potential harm to the consumers of California from licensees who have
20 been convicted of crimes. Therefore, the Legislature finds and declares that this section
21 establishes an independent basis for a board to impose discipline upon a licensee, and that the
22 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
23 to, but rather are declaratory of, existing law."

24 5. Section 118, subdivision (b), of the Code provides that the
25 suspension/expiration/surrender/cancellation of a license shall not deprive the
26 Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period
27 within which the license may be renewed, restored, reissued or reinstated.

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1 6. Section 4300(a) of the Code states that every license issued by the Board may be
2 suspended or revoked.

3 7. Section 4300.1 of the Code 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 **STATUTORY PROVISIONS**

10 8. Section 4301 of the Code states:

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

14

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

20

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

24 "(l) The conviction of a crime substantially related to the qualifications, functions, and
25 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
26 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
27 substances or of a violation of the statutes of this state regulating controlled substances or
28 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the

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

13

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

18 “(p) Actions or conduct that would have warranted denial of a license.”

19 **REGULATORY PROVISIONS**

20 9. California Code of Regulations, title 16, section 1770, states:

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

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28 ///

1 COST RECOVERY

2 10. Section 125.3 of the Code states, 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.

6 FIRST CAUSE FOR DISCIPLINE

7 (Substantially Related Conviction)

8 11. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
9 (1) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
10 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
11 of an intern pharmacist.

12 12. On or about August 16, 2013, after pleading nolo contendere, Respondent was
13 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
14 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
15 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to
16 .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James*
17 *Velintimilla* (Super. Ct. Kern County, 2013, No. BM817669A). Respondent was sentenced to 150
18 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary
19 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

20 13. On or about February 2, 2013, a California Highway Patrol Officer responded to a call
21 of a possible DUI driver that was driving on the wrong side of the road. The officer observed
22 Respondent's vehicle stop on a dirt shoulder of the road. As the officer made contact with
23 Respondent, he detected the odor of an alcoholic beverage emitting from within the vehicle.
24 Also, the officer observed that Respondent's eyes were red and smell the odor of an alcoholic
25 beverage emitting from Respondent breath and person. In addition, Respondent was unable to
26 satisfactorily perform the Field Sobriety Tests.

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SECOND CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

14. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of an intern pharmacist.

15. On or about August 16, 2013, after pleading nolo contendere, Respondent was convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a) [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James Veintimilla* (Super. Ct. Kern County, 2013, No. BM819026A). Respondent was sentenced to 150 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary probation for a period of 3 years with terms and conditions. The circumstances are as follows:

16. On or about February 13, 2013, a California Highway Patrol Officer responded to a call of a traffic collision with property damage. The officer contacted Respondent and immediately observed objective signs of intoxication. Respondent admitted that he was driving during the collision. The officer noticed that Respondent's speech was slow and slurred. Respondent admitted to the officer that he had consumed four (4), twelve ounce beers. In addition, Respondent was unable to satisfactorily perform the Field Sobriety Tests. Respondent submitted to breath test which yielded results of 0.151% and 0.154% respectively.

THIRD CAUSE FOR DISCIPLINE

(Substantially Related Conviction)

17. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision (l) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that Respondent was convicted of crimes substantially related to the qualifications, functions or duties of an intern pharmacist.

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1 18. On or about August 16, 2013, after pleading nolo contendere, Respondent was
2 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
3 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
4 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to
5 .08%] in the criminal proceeding entitled *The People of the State of California v. Matthew James*
6 *Veintimilla* (Super. Ct. Kern County, 2013, No. BM819413A). Respondent was sentenced to 150
7 days in jail, 52 weeks of alcohol counseling, ordered to pay a fine and placed on summary
8 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

9 19. On or about March 10, 2013, a California Highway Patrol Officer observed
10 Respondent's vehicle travel with a left front spare tire that was flat and was driving on the rim.
11 The officer conducted an enforcement stop of Respondent's vehicle. The officer contacted
12 Respondent and requested his driver's license, proof of vehicle insurance and vehicle registration.
13 Respondent failed to produce any of the items requested. The officer noticed objective signs of
14 alcohol intoxication and asked Respondent if he had consumed alcoholic beverage prior to
15 driving. Respondent admitted to the officer that he had consumed three (3) Firestone IPAs prior
16 to driving. Respondent was unable to satisfactorily perform the Field Sobriety Tests. Respondent
17 submitted to breath test which yielded results of 0.15% and 0.14% respectively. Respondent
18 submitted to a blood test that resulted in a blood-alcohol content level of 0.15%.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Substantially Related Conviction)**

21 20. Respondent is subject to disciplinary action under sections 490 and 4301, subdivision
22 (l) of the Code, in conjunction with California Code of Regulation, title 16, section 1770, in that
23 Respondent was convicted of crimes substantially related to the qualifications, functions or duties
24 of an intern pharmacist.

25 21. On or about August 16, 2013, after pleading nolo contendere, Respondent was
26 convicted of one (1) misdemeanor count of violating Vehicle Code section 23152, subdivision (a)
27 [driving under the influence of alcohol] and one (1) misdemeanor count of violating Vehicle Code
28 section 23152, subdivision (b) [driving with a blood-alcohol content level greater than or equal to

1 .08%], one (1) misdemeanor count of violating Vehicle Code section 20002, subdivision (a) [hit
2 and run resulting in property damage], one (1) misdemeanor count of violating Penal Code
3 section 594, subdivision (b)(1) [vandalism \$400 or more], one (1) misdemeanor count of violating
4 Penal Code section 148, subdivision (a)(1) [obstruct/resist/etc public/peace officer/emergency
5 med te] and one (1) misdemeanor count of violating Penal Code section 241, subdivision (c)
6 [assault on peace officer/firefighter] in the criminal proceeding entitled *The People of the State of*
7 *California v. Matthew James Veintimilla* (Super. Ct. Kern County, 2013, No. BM819857A).
8 Respondent was sentenced to 730 days in jail, ordered to pay a fine and placed on summary
9 probation for a period of 3 years with terms and conditions. The circumstances are as follows:

10 22. On or about March 25, 2013, the Bakersfield Police Department received a report of a
11 hit and run. At the same time a called was received and reported an unknown subject was forcing
12 entry into their residence. Officers arrived at the residence and located Respondent inside the
13 residence and had to use force to take him into custody. The officer observed Respondent's 1995
14 green Geo Prizm, which had moderate front end damage. The officer located silver paint transfer
15 on the front passenger side bumper and fender and had small pieces of red brick on the front
16 bumper and hood area. The officer inspected Respondent's vehicle and observed the keys were
17 still in the ignition, in the position and there was vomit on the driver's seat and driver's side door.
18 The officer inspected victim's 2004 silver Chrysler Pacifica and located minor damage to the rear
19 driver's side bumper and quarter panel of the vehicle. There was green paint transfer on the rear
20 bumper and quarter panel of victim's vehicle. The officer inspected the victim's brick mailbox
21 and observed that it had been knocked out of the ground and partially destroyed. The color of the
22 brick was identical to the red brick fragments located on Respondent's vehicle.

23 23. The officer contacted Respondent and noticed he had red bloodshot watery eyes,
24 slurred speech and the odor of alcoholic beverages on his breath. Respondent admitted to the
25 officer that he had consumed "a few beers" prior to driving. Respondent was unable to
26 satisfactorily perform the Field Sobriety Tests. Respondent submitted to breath test which yielded
27 a blood alcohol content of 0.13%.

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1 24. On or about March 25, 2013, Bakersfield Police Department Police Officers were
2 dispatched to an apartment regarding a possible burglary to an occupied residence in progress.
3 The officers were advised that a female resident was locked inside the upstairs bathroom. The
4 officers arrived at the residence and heard loud crashing coming from the apartment. The officers
5 noticed a decorative window had been shattered, the metal security door was shut and the front
6 door was wide open. The officers observed Respondent in the window. The officers announced
7 themselves and instructed Respondent to exit the residence. Respondent began kicking at the
8 window with his left foot and then started banging on the upstairs bathroom door. Respondent
9 began to yell, "Come out of there, and open the door I know you are in there!" The officers were
10 in fear Respondent was going to force open the upstairs bathroom door and possibly assault the
11 female resident. The officers entered the apartment and attempted to arrest Respondent, however,
12 Respondent began fighting with the officers and resisted arrest.

13 **FIFTH CAUSE FOR DISCIPLINE**

14 **(Dangerous Use of Alcohol)**

15 25. Respondent is subject to disciplinary action under section 4301, subdivision (h) of the
16 Code in that he used dangerous drugs or alcoholic beverages to the extent or in a manner as to be
17 dangerous or injurious to himself or to the public. Complainant refers to, and by this reference
18 incorporates, the allegations set forth in paragraph 13, 16, 19, 22, 23 and 24, as though set forth
19 fully.

20 **SIXTH CAUSE FOR DISCIPLINE**

21 **(Multiple DUI Convictions)**

22 26. Respondent is subject to disciplinary action under section 4301, subdivision (k) of the
23 Code in that Respondent was convicted of four (4) misdemeanor counts of violating Vehicle Code
24 section 23152, subdivision (a) [driving under the influence of alcohol] and four (4) misdemeanor
25 counts of violating Vehicle Code section 23152, subdivision (b) [driving with a blood-alcohol
26 content level greater than or equal to .08%]. Complainant refers to, and by this reference
27 incorporates, the allegations set forth in paragraphs 12, 15, 18 and 21, as though set forth fully.

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SEVENTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Violation of Licensing Chapter)

27. Respondent is subject to disciplinary action under section 4301, subdivision (o) of the Code, in that Respondent committed acts of unprofessional conduct and / or violated provisions of the licensing chapter. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 11 through 26, as though set forth fully.

EIGHTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Committed Acts that would Warrant Denial of License)

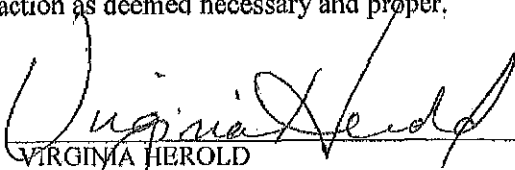
27. Respondent is subject to disciplinary action under section 4301, subdivision (p) of the Code, in that Respondent's actions or conduct would have warranted denial of a license. Complainant refers to, and by this reference incorporates, the allegations set forth in paragraphs 11 through 26, as though set forth fully.

PRAYER

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

1. Revoking or suspending Intern Pharmacist License Number 21434, issued to Matthew James Veintimilla;
2. Ordering Matthew James Veintimilla to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/14/14


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

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