



California State Board of Pharmacy
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RECEIVED BY CALIF
 BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 BOARD OF PHARMACY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.
 2015 SEP 23 AM 7:00

**APPLICATION FOR VOLUNTARY SURRENDER OF
 DESIGNATED REPRESENTATIVE LICENSE**

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>KURT E COSTA</u>	Case No. <u>515336</u>
Address of Record: <u>8336 Argo Dr Citrus Heights</u> <u>CA, 95610</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. 515336, I hereby request to surrender my designated representative license, License No. EXC 23498. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, I will no longer be subject to the terms and conditions of probation. I understand that this surrender constitutes a record of discipline and shall become a part of my license history with the Board.

Upon the acceptance of the surrender, I shall relinquish my designated representative license to the Board within ten (10) days of notification by the Board that the surrender is accepted. I understand that I may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. I further understand that I shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

PLEASE BE ADVISED THAT YOU ARE NOT RELIEVED OF THE REQUIREMENTS OF YOUR PROBATION UNLESS THE BOARD NOTIFIES YOU THAT YOUR REQUEST TO SURRENDER YOUR LICENSE HAS BEEN ACCEPTED.

[Signature]
 Applicant's Signature

9-20-15
 Date

[Signature]
 Executive Officer's Approval

9/25/15
 Date

All items on this application are mandatory in accordance with your probationary order and the Board's Disciplinary Guidelines as authorized by Title 16, California Code of Regulations section 1760. Failure to provide any of the requested information or providing unreadable information will result in the application being rejected as incomplete. The information provided on this form will be used to determine eligibility for surrender. The official responsible for information maintenance is the Executive Officer, telephone (916) 574-7900, 1625 N. Market Blvd., Suite N-219, Sacramento, CA 95834. The information you provide may also be disclosed in the following circumstances: (1) in response to a Public Records Act request; (2) to another government agency as required by state or federal law; or, (3) in response to a court or administrative order, a subpoena, or a search warrant. Each individual has the right to review the files or records maintained on them by our agency, unless the records are identified as confidential information and exempted by Section 1798.40 of the Civil Code.

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

In the Matter of the Statement of Issues
Against:

KURT EUGENE COSTA,

Respondent.

Case No. 5336

OAH No. 2015050002

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

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

In the Matter of the Statement of Issues
Against:

KURT EUGENE COSTA,

Respondent.

Case No. 5336

OAH No. 2015050002

PROPOSED DECISION

This matter was heard before Erin R. Koch-Goodman, Administrative Law Judge, Office of Administrative Hearings, State of California, on June 9, 2015, in Sacramento, California.

Karen Denvir, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Kurt Eugene Costa (respondent) represented himself.

Evidence was received, the record closed, and the matter submitted on June 9, 2015.

FACTUAL FINDINGS

1. On January 24, 2014, the Board received respondent's application for a Designated Representative (DR) License. A DR has unsupervised access to dangerous drugs and devices and generally secures the same on behalf of a wholesaler.
2. On September 3, 2014, the Board denied respondent's application. On October 9, 2014, the Board received respondent's request for hearing before an administrative law judge pursuant to Government Code section 11505.
3. On March 27, 2015, complainant, in her official capacity, served the instant Statement of Issues on respondent.

Criminal Convictions

4. On December 30, 1998, respondent was convicted in the Superior Court of California, County of Sacramento, Case Number 98T03850, on a plea of nolo contendere, to violating Vehicle Code section 23152(a) (driving while under the influence of drugs or alcohol or their combined influence), a misdemeanor. Respondent was sentenced to 48 hours in the Weekend Work Program (WWP), placed on three years of probation, ordered to attend a three-month First Offender program, and pay fines and fees.

On February 4, 1999, the Court found that respondent failed to complete the 48 hours in the WWP. On February 23, 1999, the Court found that respondent failed to complete the three-month First Offender Program. On April 26, 2001, respondent enrolled in the First Offender Program and completed the same on September 21, 2001.

The incident underlying the 1998 conviction occurred on August 2, 1998, at 12:01 a.m., when respondent was cited and arrested at Auburn Boulevard and North Garfield roads for driving under the influence of alcohol. As of June 20, 2014, when the Board requested information from the California Highway Patrol (CHP), the records pertaining to this citation and arrest, number HP62935, had been purged, because the dates of arrest exceeded CHP record retention guidelines.

5. On July 19, 2005, respondent was convicted in the Superior Court of California, County of Sacramento, Case Number 05T02347, on a plea of nolo contendere, to violating Vehicle Code section 23152(a) (driving while under the influence of drugs or alcohol or their combined influence), a misdemeanor, with a prior conviction for the same, and an enhancement under Vehicle Code section 23578 (having a blood alcohol level of 0.15% or higher). Respondent was sentenced to 10 days in jail, placed on four years of probation, ordered to attend an 18-month treatment program (SB38 program) and 26 Alcoholics Anonymous (AA) meetings or serve 13 days in jail, and pay fines and fees. Respondent's driver's license was restricted to/from/during work and to/from the SB 38 program for 18 months.

On October 4, 2005, the Court found that respondent failed to attend 26 AA meetings and sentenced him to an additional 13 days in jail. On March 13, 2006, the Court found that respondent failed to complete the SB38 program. On March 12, 2007, the Court again found that respondent failed to complete the SB38 program.

The incident underlying the conviction occurred on May 6, 2005, at 11:49 p.m., when respondent was cited and arrested on Auburn Boulevard between Manzanita and Hemlock roads for driving under the influence of alcohol. As of June 20, 2014, when the Board requested information from the California Highway Patrol (CHP), the records pertaining to this citation and arrest, number 87524VP, had been purged, because the dates of arrest exceeded CHP record retention guidelines. Respondent recalled some circumstances underlying his arrest. He left work after lunch and went to Jackson Casino with a friend. Respondent gambled and drank alcohol at the casino. Respondent drove his friend home and

then attempted to drive himself home. Respondent was swerving while driving and was pulled over by the CHP.

6. On January 8, 2007, respondent was convicted in the Superior Court of California, County of Sacramento, Case Number 07T00099, on a plea of nolo contendere, to violating Vehicle Code section 23152(b) (driving with a blood alcohol level of .08% or higher), a misdemeanor, with two prior convictions for the same, and an enhancement of Vehicle Code section 23578 (having a blood alcohol level of 0.15% or higher), and Vehicle Code section 12500(a) (driving a vehicle without a valid driver's license). Respondent was sentenced to 10 weeks house arrest with ankle monitoring, five years of probation, ordered to attend an 18-month SB38 program and 24 Alcoholics Anonymous (AA) meetings or serve 12 days in jail, and pay fines and fees. In addition, respondent's driver's license was revoked for three years.

The incident underlying the conviction occurred on January 1, 2007, at 6:46 p.m., when respondent was cited and arrested on Sunrise Boulevard and Locher Way for driving under the influence of alcohol and without a license. Respondent was driving on the wrong side of the road, into oncoming traffic, and failed to immediately yield to the red lights and siren of a fully marked police car in pursuit. Respondent traveled through a residential neighborhood for several minutes before noticing the police car and pulling over. Respondent displayed objective signs of intoxication, failed field sobriety tests, and a breathalyzer test revealed a .27% Blood Alcohol Content (BAC).

Rehabilitation, Mitigation, and Aggravation

7. Respondent is 44 years old. Respondent began drinking at age 23. Respondent considered himself a functioning alcoholic. He acknowledged drinking at all times, except when asleep or at work.

For respondent, his arrest on January 1, 2007, was a turning point. Sitting in jail, he realized that he could lose everything, including his wife and daughter, if he continued to make the same choices. Respondent determined that alcohol was his problem and he resolved to quit. Respondent identifies his sobriety date as January 2, 2007. For three years following his release, respondent attended AA meetings five times per week and always had a sponsor.

In 2007-2008, respondent attended and completed the Court mandated SB38 program. Respondent believes the program was helpful because he wanted to be sober and he was committed to making a change in his life. He learned how to live from day-to-day without alcohol; that he was sick and needed help; that he could not quit on his own; and that there are resources and tools to help. Respondent's current philosophy: "put one foot in front of the other. Today I have more than what I had before."

8. Respondent has met all of his sentencing obligations. He has paid all fees and fines, has performed all the community service required under the Weekend Work Program,

served all time, and attended all of the meetings and counseling sessions ordered by the court. His criminal probation ended in 2012.

9. Respondent has been clean and sober for eight years. Currently, he attends AA meetings three times per month. He is married. He now owns a home, and has one daughter, who just graduated from high school. Respondent has been honest with his daughter about his convictions. He tells her to never drive drunk and to call him if she needs a ride.

Respondent has a strong support network of people to help him maintain his sobriety. He regularly attends AA meetings and he has a strong relationship with his AA sponsor. At work, his coworkers offer their support, and at home, his father and wife remain vigilant backers.

10. Respondent works for AmerisourceBergen, a large supplier of dangerous drugs and devices. Respondent has worked for AmerisourceBergen for 14 years. In 2013, respondent was selected for a Warehouse Supervisor position on the night shift. Currently, he is the only supervisor without a DR license, which means that he must always have supervision. Respondent's job is not at risk if he is unable to get a DR license, but his further promotional opportunities at AmerisourceBergen will be stymied.

Respondent offered four letters of support from members of the AmerisourceBergen management team: John Jessee, Shawn McGuire, Randy Howery, and Rich Wilson. Mr. Jessee, Regulatory Compliance Manager, acknowledges that:

Kurt has done some things in his younger days that he regrets and that he wishes he could put behind him. He has worked hard to prove himself to us that he is a responsible and accountable, and has done so time and time again. He is worthy of the title of Supervisor of our company and any other titles he aspires to in his career.

Mr. McGuire, Direction of Operations II, hired respondent 15 years ago and states:

Kurt has conquered the personal issues that are still present on his record today . . . his advancements at work are a direct result of getting his personal affairs in order. I have over 30 years of management experience and have the ultimate responsibility for the safety and security of the business, including the 119 associates, 900 customer's locations and \$375,000,000.00 in inventory. I have 100% confidence leaving this responsibility in Kurt's hands on a Nightly basis or for the occasional weekend work as he runs his shift, should you enable that by granting him a license.

Mr. Howery, Night Supervisor, has worked with respondent for 14 years at AmerisourceBergen. Mr. Howery believes that: "Kurt is an asset to our business and the associates around him." Mr. Wilson, Warehouse Manager – Swings, has worked with respondent for 10 years and spoken to respondent about his past and states: "I am completely assured that those issues are in the past and will not come up again."

11. At hearing, respondent acknowledged his convictions, as well as the underlying circumstances of each conviction, which strongly suggests that respondent is taking the necessary steps towards rehabilitation. (See *Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940.) In addition, respondent has been an active member of AA for eight years, and he remains so to date. However, the seriousness of respondent's three convictions cannot be overlooked. On each occasion, respondent disregarded the law and drove drunk, indiscriminately risking the health and safety of the public and himself.

12. In California Code of Regulations, title 16, section 1769, subdivision (c), the Board has set forth criteria for evaluating the rehabilitation of a licensee who has been convicted of a crime. These criteria include:

- (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.

13. Respondent has three alcohol related convictions: December 30, 1998 – 17 years ago, July 19, 2005 – 10 years ago, and January 8, 2007 – 8 years ago. "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." (*Griffiths v. Superior Court (Medical Board of California)* (2002) 96 Cal. App.4th 757, 770.)

14. At hearing, respondent submitted evidence of mitigation and rehabilitation. Respondent's testimony was forthright and honest. He accepted full responsibility for his illegal conduct. Today, he is clean and sober and actively involved in AA. He has complied with all of the terms and conditions of his criminal probation. His character references were strong and supportive. When all evidence is considered, the public health, safety and welfare would be adequately protected if respondent was granted a restricted DR license.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 480(a), a board may deny a license on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

[¶] . . . [¶]

(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

2. Pursuant to Business and Professions Code section 4301, the Board may take action against any holder of a license who has engaged in unprofessional conduct, including any of the following:

(h) The use 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.

California Code of Regulations, title 16, section 1770 provides 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.

3. Cause for denial exists under Business and Professions Code section 480(a)(1), by reason of the matters set forth in Factual Findings 4 through 6. Respondent has three criminal convictions.

4. Cause for denial exists under Business and Professions Code section 480, subdivision (a)(3)(A) and 4301, subdivision (l), by reason of the matters set forth in Factual Findings 4 through 6. Respondent's three DUI convictions evidence his potential unfitness to perform the duties and functions authorized by a DR license in a manner consistent with the public health, safety, and welfare. Consequently, the convictions are substantially related to the qualifications, functions, and duties of a designated representative.

5. Cause for denial exists under Business and Professions Code section 4301, subdivision (h), by reason of the matters set forth in Factual Findings 4 through 6. Respondent's DUI convictions establish that he engaged in the use of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to himself and other persons.

6. Cause for denial exists under Business and Professions Code section 4301, subdivision (k), by reason of the matters set forth in Factual Findings 4 through 6. Respondent was convicted of more than one misdemeanor involving the use and consumption of alcoholic beverage.

7. As set forth in Factual Findings 7 through 14, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety and welfare to allow him to obtain a license, on a probationary basis, and subject to the terms and conditions set forth below.

ORDER

Upon satisfaction of all statutory and regulatory requirements for issuance of a designated representative license, a designated representative license shall be issued to respondent Kurt Costa and immediately revoked; the order of revocation is stayed, and respondent is placed on probation for three (3) years, upon the following terms and conditions:

1. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws;

- an arrest or issuance of a criminal complaint for violation of any state or federal law;
- a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- a conviction of any crime;
- discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's designated representative certificate or which is related to the practice of pharmacy or the manufacturing, obtaining, handling or distribution or billing or charging for of any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the Board quarterly, on a schedule as directed by the Board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the Board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, upon request at such intervals and locations as are determined by the Board or its designee. Failure to appear for any scheduled interview without prior notification to Board staff, or failure to appear for two (2) or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

4. Cooperate with Board Staff

Respondent shall cooperate with the Board's inspection program and with the Board's monitoring and investigation of respondent's compliance with the terms and conditions of his probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, respondent shall notify all present and prospective employers of the decision in this case and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment, respondent shall cause his direct supervisor, designated representative-in-charge (including each new designated representative-in-charge employed during respondent's tenure of employment) and owner to report to the Board in writing acknowledging that the listed individual(s) has/have read the decision in this case and terms and conditions imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the Board.

If respondent works for or is employed by or through a pharmacy employment service, respondent must notify his direct supervisor, designated representative-in-charge and owner at each entity licensed by the Board of the terms and conditions of the decision in this case in advance of the respondent commencing work at each licensed entity. A record of this notification must be provided to the Board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of respondent undertaking any new employment by or through a pharmacy employment service, respondent shall cause his direct supervisor with the pharmacy employment service to report to the Board in writing acknowledging that he or she has read the decision in this case and the terms and conditions imposed thereby. It shall be the respondent's responsibility to ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the Board.

Failure to timely notify present or prospective employer(s) or to cause that/those employer(s) to submit timely acknowledgements to the Board shall be considered a violation of probation.

"Employment" within the meaning of this provision shall include any full-time, part-time, temporary or relief service or pharmacy management service as a designated representative or in any position for which a designated representative license is a requirement or criterion for employment, whether the respondent is considered an employee or independent contractor or volunteer.

6. No Being Designated Representative-in-Charge

During the period of probation, respondent shall not be the designated representative-in-charge of any entity licensed by the Board unless otherwise specified in this order. Assumption of any such unauthorized supervision responsibilities shall be considered a violation of probation.

7. Probation Monitoring Costs

Respondent shall pay any costs associated with probation monitoring as determined by the Board each and every year of probation. Such costs shall be payable to the Board on a

schedule as directed by the Board or its designee. Failure to pay such costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Respondent shall, at all times while on probation, maintain an active, current designated representative license with the Board, including any period during which suspension or probation is tolled. Failure to maintain an active, current license shall be considered a violation of probation.

If respondent's designated representative license expires or is cancelled by operation of law or otherwise at any time during the period of probation, including any extensions thereof due to tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

9. License Surrender While on Probation/Suspension

Following the effective date of this decision, should respondent cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, respondent may tender his designated representative license to the Board for surrender. The Board or its designee shall have the discretion whether to grant the request for surrender or take any other action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the license, respondent will no longer be subject to the terms and conditions of probation. This surrender constitutes a record of discipline and shall become a part of the respondent's license history with the Board.

Upon acceptance of the surrender, respondent shall relinquish his designated representative license to the Board within ten (10) days of notification by the Board that the surrender is accepted. Respondent may not reapply for any license, permit, or registration from the Board for three (3) years from the effective date of the surrender. Respondent shall meet all requirements applicable to the license sought as of the date the application for that license is submitted to the Board.

10. Notification of a Change in Name, Residence Address, Mailing Address or Employment

Respondent shall notify the Board in writing within ten (10) days of any change of employment. Said notification shall include the reasons for leaving and the address of the new employer, supervisor and owner and work schedule, if known. Respondent shall further notify the Board in writing within ten (10) days of a change in name, residence address and mailing address, or phone number.

Failure to timely notify the Board of any change in employer(s), name(s), address(es), or phone number(s) shall be considered a violation of probation.

11. Tolling of Probation

Except during periods of suspension, respondent shall, at all times while on probation, be employed as a designated representative in California for a minimum of 20 hours per calendar month. Any month during which this minimum is not met shall toll the period of probation, i.e., the period of probation shall be extended by one month for each month during which this minimum is not met. During any such period of tolling of probation, respondent must nonetheless comply with all terms and conditions of probation.

Should respondent, regardless of residency, for any reason (including vacation) cease working as a designated representative for a minimum of 20 hours per calendar month in California, respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (10) days of the resumption of work. Any failure to provide such notification(s) shall be considered a violation of probation.

It is a violation of probation for respondent's probation to remain tolled pursuant to the provisions of this condition for a total period, counting consecutive and non-consecutive months, exceeding thirty-six (36) months.

"Cessation of work" means any calendar month during which respondent is not working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053. "Resumption of work" means any calendar month during which respondent is working as a designated representative for at least 20 hours as defined by Business and Professions Code section 4053.

12. Violation of Probation

If respondent has not complied with any term or condition of probation, the Board shall have continuing jurisdiction over respondent, and probation shall automatically be extended until all terms and conditions have been satisfied or the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed.

If respondent violates probation in any respect, the Board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be automatically extended, until the petition to revoke probation or accusation is heard and decided.

13. Completion of Probation

Upon written notice by the Board indicating successful completion of probation, respondent's designated representative license will be fully restored.

14. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, respondent shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the Board or its designee. Respondent must attend at least one group meeting per week unless otherwise directed by the Board or its designee. Respondent shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Failure to attend or submit documentation thereof shall be considered a violation of probation.

15. Random Drug Screening

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

During suspension, respondent shall not enter any pharmacy area or any portion of the licensed premises of a wholesaler, veterinary food-animal drug retailer or any other distributor of drugs licensed by the board, or any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not perform any of the duties of a designated representative, nor do any act involving drug selection, selection of stock, manufacturing, dispensing; nor shall respondent manage, administer, or be a consultant to any licensee of the board, or have access to or control the

ordering, manufacturing or dispensing of dangerous drugs and devices and controlled substances. Respondent shall not resume work until notified by the board.

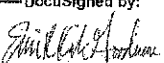
Respondent shall not direct, control or perform any aspect involving the distribution of dangerous drugs and devices and controlled substances. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed entity in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

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

16. Abstain from Drugs and Alcohol Use

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

DATED: July 2, 2015

DocuSigned by:

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ERIN R. KOCH-GOODMAN
Administrative Law Judge
Office of Administrative Hearings

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

11 In the Matter of the Statement of Issues
Against:

Case No. 5336

12 **KURT EUGENE COSTA**

STATEMENT OF ISSUES

13 Respondent.

14
15
16 Virginia Herold ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Statement of Issues solely in her official capacity as the
19 Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

20 2. On or about January 24, 2014, the Board received an Application for a Designated
21 Representative License from Kurt Eugene Costa ("Respondent"). On or about January 5, 2014,
22 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
23 representations in the application. The Board denied the application on September 3, 2014.

24 **JURISDICTION**

25 3. Pursuant to Business and Professions Code ("Code") section 485(b), on or about
26 September 3, 2014, Respondent's application was denied and he was notified of the right to a
27 hearing to appeal the denial.

28 ///

1 4. On or about October 9, 2014, the Board received Respondent's request for a hearing
2 to appeal the denial of his application.

3 **STATUTORY PROVISIONS**

4 5. Business and Professions Code ("Code") section 4300 states, in pertinent part:

5 (c) The board may refuse a license to any applicant guilty of unprofessional
6 conduct.

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

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

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

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

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

19 (l) The conviction of a crime substantially related to the qualifications,
20 functions, and duties of a licensee under this chapter. The record of conviction of a
21 violation of Chapter 13 (commencing with Section 801) of Title 21 of the United
22 States Code regulating controlled substances or of a violation of the statutes of this
23 state regulating controlled substances or dangerous drugs shall be conclusive
24 evidence of unprofessional conduct. In all other cases, the record of conviction shall
25 be conclusive evidence only of the fact that the conviction occurred. The board may
26 inquire into the circumstances surrounding the commission of the crime, in order to
27 fix the degree of discipline or, in the case of a conviction not involving controlled
28 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 no
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.

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1 7. Code section 480¹ states, in pertinent part:

2 (a) A board may deny a license regulated by this code on the grounds that the
3 applicant has one of the following:

4 (1) Been convicted of a crime. A conviction within the meaning of this section
5 means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
6 Any action that a board is permitted to take following the establishment of a
7 conviction may be taken when the time for appeal has elapsed, or the judgment of
8 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 the
10 provisions of Section 1203.4 of the Penal Code.

11 (3)(A) Done any act that if done by a licentiate of the business or profession in
12 question, would be grounds for suspension or revocation of license.

13 (B) The board may deny a license pursuant to this subdivision only if the crime
14 or act is substantially related to the qualifications, functions, or duties of the business
15 or profession for which application is made.

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of Crimes)**

18 8. Respondent's application is subject to denial under Code section 480(a)(1), in that he
19 was convicted of the following crimes that are substantially related to the qualifications, functions
20 or duties of a designated representative:

21 a. On or about December 30, 1998, in the case of *People v. Kurt Eugene Costa*, (Super.
22 Ct. Sacramento County, 1998, Case No. 98T03850), Respondent was convicted by the Court on
23 his plea of nolo contendere of violating Vehicle Code section 23152(a) (driving while under the
24 influence of drug or alcohol or their combined influence), a misdemeanor. The circumstances of
25 the crime were that on or about August 2, 1998, Respondent drove a vehicle while having a blood
26 alcohol level of 0.16%/0.17%.

27 b. On or about July 19, 2005, in the case of *People v. Kurt Eugene Costa*, (Super. Ct.
28 Sacramento County, 2005, Case No. 05T02347), Respondent was convicted by the Court on his

¹ This Statement of Issues is based on Code section 480 as it was in effect at the time of the denial. Section 480 was amended effective January 1, 2015, with the addition of the following language: "(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal."

1 plea of nolo contendere of violating Vehicle Code section 23152(a) (driving while under the
2 influence of drug or alcohol or their combined influence), a misdemeanor, with a prior conviction
3 of the same, as set forth above in subdivision (a), with an enhancement of Vehicle Code section
4 23578 (having a blood alcohol level of 0.15% or higher). The circumstances of the crime were
5 that on or about May 6, 2005, Respondent drove a vehicle while having a blood alcohol level of
6 0.32%.

7 c. On or about January 8, 2007, in the case of *People v. Kurt Eugene Costa*, (Super. Ct.
8 Sacramento County, 2007, Case No. 07T00099), Respondent was convicted by the Court on his
9 plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood alcohol
10 level of .08% or higher), a misdemeanor, with two prior convictions of the same, as set forth
11 above in subdivisions (a) and (b), with an enhancement of Vehicle Code section 23578 (having a
12 blood alcohol level of 0.15% or higher), and Vehicle Code section 12500(a) (driving a vehicle
13 without a valid driver's license). The circumstances of the crime were that on or about January 1,
14 2007, Respondent drove a vehicle while having a blood alcohol level of 0.27% and was driving
15 into oncoming traffic.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Committed Acts Which If Done By A Licentiate)**

18 9. Respondent's application is subject to denial under Code section 480(a)(3)(A), in that
19 he committed acts which if done by a licentiate of the profession would constitute grounds for
20 discipline under Code section 4301(l) (conviction of a crime). The conduct described above in
21 paragraph 8, would also constitute grounds for discipline under Code sections 4301(h) (used
22 alcohol to an extent or in a manner dangerous or injurious to herself and the public); and 4301(k)
23 (conviction of more than one misdemeanor involving the consumption of alcohol).

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PRAYER

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

1. Denying the application of Kurt Eugene Costa for a Designated Representative License; and,
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/27/15 
VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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