

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

In the Matter of the Statement of Issues Against:

JAMES DONALD JACKMAN,

Pharmacy Technician Registration Applicant,

Respondent.

Case No. 5394

OAH No. 2015100632

ORDER DENYING RECONSIDERATION

The Petition for Reconsideration, which was filed by respondent in the above-entitled matter, having been read and considered, and good cause for the granting of the petition not having been shown, the petition is hereby denied.

The February 10, 2016, Decision, which was stayed to allow time for the Board to consider the Petition, is the Board of Pharmacy's final decision in this matter and will become effective at the end of the stay, that is, at 5:00 p.m. on March 21, 2016.

IT IS SO ORDERED this 22nd day of March, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

**BEFORE THE
BOARD OF PHARMACY
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STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 5394

JAMES DONALD JACKMAN,

OAH No. 2015100632

Pharmacy Technician Registration Applicant,

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Pharmacy as the decision in the above-entitled matter, except that, pursuant to the provisions of Government Code section 11517, subdivision (c)(2)(C), the following technical change is made to page one, paragraph #1, under Factual Findings:

“On September 5, 2015, Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (Board), filed the Statement of Issues in her official capacity.”

In addition, a technical change is made to the term “Pharmacist Technician” which should be listed as “Pharmacy Technician” throughout the document.

The technical changes made above do not affect the factual or legal basis of the Proposed Decision, which shall become effective on March 11, 2016.

IT IS SO ORDERED this 10th day of February, 2016.

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:

JAMES DONALD JACKMAN,

Respondent.

Case No. 5394

OAH No. 2015100632

PROPOSED DECISION

Administrative Law Judge John DeCure, Office of Administrative Hearings, State of California, heard this matter on December 9, 2015, in Los Angeles, California.

Kevin Wrigley, Deputy Attorney General, represented Complainant. Respondent James Donald Jackman (Respondent) was present and represented himself. Evidence was received and argument was heard. The record remained open for Respondent to submit further evidentiary documents by December 18, 2015. On December 15, 2015, Respondent submitted a copy of a character reference letter from Linda Wright, which was marked as Exhibit D. On December 18, 2015, Respondent submitted a copy of a character reference letter from Teresa Ramirez, which was marked as Exhibit E. Complainant's counsel was allowed to submit any objections by December 24, 2015, but no objections were made. Exhibits D and E were admitted into evidence, the record was closed, and the matter was submitted for decision on December 24, 2015.

FACTUAL FINDINGS

1. On October 23, 2015, Complainant Virginia Herold, Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, State of California (Board), filed the Statement of Issues in her official capacity.

2. On March 24, 2014, Respondent submitted an Application (Application) to the Board for a pharmacy technician registration. On December 19, 2014, the Board denied the Application. Respondent timely appealed the Board's decision and this matter ensued.

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The Convictions

3(a). On August 22, 2013, in a criminal proceeding entitled *The People of the State of California v. James Donald Jackman*, San Bernardino County Superior Court case number TVA101408, Respondent pled guilty to one count of violating Vehicle Code section 23152, subdivision (b) (driving with blood-alcohol-content of 0.08 percent or more), a misdemeanor (the DUI conviction). The court placed Respondent on a 36-month period of probation with terms and conditions including serving 79 days in jail (with eligibility for a weekend work release program), attending a nine-month alcohol program, and payment of fines and fees. Respondent timely completed the nine-month alcohol program by June 10, 2014. Respondent is currently in compliance with his criminal probation, which is scheduled to expire on August 21, 2016.

3(b). The facts and circumstances leading to the DUI conviction involved Respondent reuniting with a childhood friend who was in the military and had returned from a tour of duty overseas. Respondent visited with the friend, whom he had not seen in years, which made the visit an “emotional” experience. Respondent consumed at least 12 beers during the visit over the course of four to five hours. When he left the friend, he got in his car to attempt to drive from San Dimas to Victorville, about a 40-mile distance. He was obviously impaired, but determined to drive. He recalls being pulled over by the police but can’t remember how fast he was driving when police spotted him, although he could have been speeding at 100 miles per hour, as they reported. He was unresponsive to their commands and was “roughed up” as a result. Respondent later submitted to a blood test resulting in a blood-alcohol reading of 0.25 percent, which is more than three times the legal limit. Respondent was sincerely remorseful about his behavior, stating, “thank God I didn’t kill myself or someone else.”

3(c). Respondent described his history of alcohol use to involve “social drinking,” which began when he was in high school. As Respondent got older, he would drink one or two beers after work in order to relax, and on weekends, drink up to 12 beers in a sitting. Respondent attended several Alcoholics Anonymous (AA) meetings as required by his criminal probation order and spoke about himself with a group of other participants. Although Respondent had to introduce himself as an alcoholic, which is standard AA protocol, he did not consider himself an alcoholic because he does not crave alcohol and feels he can stop anytime. As a result of the DUI conviction, Respondent stopped drinking completely in 2013 in an effort to be completely law-abiding. Respondent could not remember the precise date he stopped drinking and did not consider it to be a “sobriety date” in the parlance of recovery, because he does not view himself as an alcoholic.

4(a). On May 18, 2005, in a criminal proceeding entitled *The People of the State of California v. James Donald Jackman*, Los Angeles County Superior Court case number SPA46348, Respondent pled nolo contendere to one count of violating Penal Code section 485 (misappropriation of lost property), a misdemeanor (the misappropriation conviction). The court placed Respondent on a two-year period of probation with terms and conditions including payment of fines and fees.

4(b). The facts and circumstances leading to the misappropriation conviction are that on April 14, 2005, at approximately midnight, an Arcadia police officer conducted a traffic stop on Respondent's car. After Respondent consented to a search of his car, the officer found two no-trespassing signs belonging to a local office building and one parking sign belonging to a bank. When questioned, Respondent admitted that the signs were "probably stolen," but Respondent maintained that he had merely found them. Respondent's eyes were bloodshot and he admitted he had consumed "a couple" of drinks.

4(c). Respondent collected discarded signs and liked to use them as home decorations. If he came across a discarded sign he would collect it. When he was pulled over by Arcadia police, he had completely forgotten that he had three signs in the trunk of his car.

4(d). On January 29, 2015, the court dismissed the misappropriation conviction pursuant to Penal Code section 1203.4.

5(a). Suzy Patell, a Board Inspector since 2012 and a registered pharmacist in California and Nevada, testified credibly on behalf of the Board on the issue of Respondent's fitness to hold a pharmacy technician license. Inspector Patell has been a licensed California pharmacist since 1991 and practiced as a Pharmacist in Charge from 1991 until 2012. She has performed many investigations for the Board and is very familiar with the functions and duties of pharmacists and pharmacist technicians.

5(b). Pharmacist technicians perform a variety of non-discretionary tasks under a pharmacist's direction and supervision. These tasks include typing, labeling and filling prescriptions as well as counting, labeling, and storing drug inventories. Pharmacist technicians also assist pharmacy customers who present themselves to obtain and pay for their prescriptions. The pharmacist technician is therefore involved with financial transactions, which would include handling both cash and customer credit-card information.

5(c). Although a pharmacist must supervise a pharmacist technician's work, in reality it is impracticable for a pharmacist to watch over every one of the many tasks a pharmacist technician performs. Hence, a pharmacist technician must be reliable and trustworthy enough to work effectively without direct oversight. A pharmacist technician must be able to perform his or her functions and duties as diligently and accurately as possible, applying sound judgment to every task.

5(d). Pharmacist technicians also have access to dangerous drugs and controlled substances which are frequently abused and have a high "street" (i.e., illicit resale) value. Pharmacist technicians may also access personal, confidential patient information, which has the potential for misuse in terms of violating a patient's privacy rights or engaging in identity theft. These factors, combined with the pharmacist technician's involvement with customer financial transactions, heighten the importance of honesty, integrity, and trustworthiness in the licensee.

5(e). Inspector Patell reviewed the Board's entire file materials and case history regarding Respondent's application for licensure. She was concerned by the high level of intoxication Respondent displayed in the DUI conviction, and concerned that Respondent had disclosed in his application a history including three other arrests for public intoxication which occurred in 2005, 2006 and 2012. (Exhibit 1.) These incidents involving impairment suggested a history of addiction or alcohol abuse. A pharmacy technician cannot be impaired at any time and still perform his functions and duties safely. If Respondent were to work as a pharmacy technician, a substantial risk of harm to the public would be present due to his past issues with impairment.

6. Respondent provided several character reference letters in mitigation. Sheery Nie, who owns the GNC vitamin store that employs Respondent, described Respondent as a dependable, hard-working employee with a good attitude and work ethic. Ms. Nie was compelled to promote Respondent to store manager within a year of his hiring and further noted his success in that position. Ms. Nie made no reference to Respondent's convictions. (Exhibit A.) Catrina Thompson, Respondent's fiancé, attested that Respondent no longer drinks, has been sober for over two years and lives a healthy, positive lifestyle which includes working hard at his job, visiting frequently with family and exercising regularly. Ms. Thompson was aware of the DUI conviction and attributed Respondent's actions to his losing control of his emotions due to the return of a childhood friend from military service. Ms. Thompson believed the incident was out of character and attested that Respondent has been deeply remorseful ever since. (Exhibit B.) Linda Wright is the owner of Movement Unlimited Fitness Center and has known Respondent, who is a gym member, for eight years. Ms. Wright described Respondent's voluntary services assisting disabled gym members as a personal trainer and commended him for his consideration and willingness to help. Ms. Wright made no reference to Respondent's convictions. (Exhibit D.) Teresa Ramirez, Respondent's mother, described Respondent as a good son who is hard-working, responsible and worthy of the licensure he seeks. Although Ms. Ramirez did not directly reference Respondent's convictions, she was aware he had complied with his probation. She further commented that he "knows better now, after all this time . . ." (Exhibit E.)

7. Respondent was a candid witness. He freely admitted to an extensive history of social drinking and explained that he did not consider himself an alcoholic because he does not have any desire to drink and faces no personal struggles with such desires. He refused to present himself as a reformed alcoholic in need of further AA meetings or an AA sponsor not out of defiance, but because he truly believes he does not suffer from alcoholism. Respondent also admitted that he did not disclose the Statement of Issues with his employer, Ms. Nie, but he did disclose his convictions to her.

8. Respondent's testimony regarding his drinking history was sincere, but unpersuasive. His documented history of alcohol consumption is extensive, spanning roughly eight years from 2005 until 2012. During that time, Respondent sustained multiple arrests for public intoxication and two convictions, both of which involved the consumption of alcohol. He also routinely drank in excess on weekends. Although Respondent's contention that he is not alcoholic appears sincere, he displayed no real insight into the

reasons why he engaged in such self-destructive alcohol-related behavior over a lengthy period of time, concluding only that he “doesn’t do that anymore.”

LEGAL CONCLUSIONS

1. Cause exists to deny Respondent's Application, pursuant to Business and Professions Code (Code) section 480, subdivision (a)(1), in conjunction with California Code of Regulations, title 16 (Regulation), section 1770, on grounds that Respondent's DUI criminal conviction is substantially related to the qualifications, functions or duties of a registered pharmacy technician as set forth in Factual Findings 3 and 5.

2(a). Cause exists to deny Respondent's Application, pursuant to Code section 480, subdivision (a)(2), in conjunction with Regulation section 1770, on grounds that Respondent's misappropriation criminal conviction evidences acts involving dishonesty, fraud or deceit with the intent to substantially benefit himself, which further evidences present or potential unfitness to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare, as set forth in Factual Finding 4.

2(b). Penal Code section 485 provides:

One who finds lost property under circumstances which give him knowledge of or means of inquiry as to the true owner, and who appropriates such property to his own use, or to the use of another person not entitled thereto, without first making reasonable and just efforts to find the owner and to restore the property to him, is guilty of theft.

2(c). Moral turpitude is inherent with crimes involving fraudulent intent or intentional dishonesty for purposes of personal gain. (*Yakov v. State Board of Med. Ex.* (1968) 68 Cal.2d 67.) In cases involving convictions of robbery, embezzlement, and other forms of theft, no difficulty attends the determination of the question of moral turpitude. (*In Re Rothrock* (1944) 25 Cal.2d 588, 590.) Respondent's misappropriation conviction was for a willful offense in which Respondent took multiple business signs for his own use. This crime was a form of theft.

3(a). Regulation section 1770, which applies to pharmacy technician applications, provides:

For the purpose of denial, suspension, or revocation of a personal or facility license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered substantially related to the qualifications, functions or duties of a licensee or registrant if to a substantial degree it evidences present or potential

unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.

3(b). Respondent's two convictions each fall within this definition of substantial relationship to the duties of a pharmacy technician. Respondent's DUI conviction was extremely serious. Respondent was so inebriated that he could not be subjected to a field sobriety test and was unable to even respond to the commands of arresting officers. His blood-alcohol content was measured at over three times the legal limit. He attempted to drive an automobile at 100 miles per hour on a 40-mile journey under these conditions. Respondent's history of alcohol use leading to either arrests or convictions is extensive enough to justifiably warrant Board concern, since the proper handling of controlled substances and other powerful drugs is central to the work of a pharmacy technician and requires consistently sound judgment. Respondent's misappropriation conviction involved his conscious decision to remove property plainly belonging to two other owners while making no reasonable and just efforts to find those owners and to restore the property to them. Although this conviction is remote in time and involves presumably inexpensive items, it encompasses acts involving dishonesty, fraud, or deceit and is substantially related in that a pharmacy technician must be honest and trustworthy to carry out his job functions. (Factual Findings 3, 4 and 5.)

4. Cause exists to deny Respondent's Application, pursuant to Code section 480, subdivision (a)(3)(A) on grounds that Respondent committed acts which if done by a registered pharmacy technician would be grounds for suspension or revocation of his license. Pursuant to Code section 4301, subdivision (f), a licensee has committed unprofessional conduct if he committed any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is a felony or misdemeanor and whether it is committed in the course of licensee relations or otherwise. Code section 4301, subdivision (h), further provides that a licensee commits unprofessional conduct when administering alcoholic beverages to oneself in a manner dangerous or injurious to oneself or the public. As set forth above, Respondent committed both described acts leading to his two convictions. (Factual Findings 3, 4 and 5.)

5. Regulation section 1769, subdivision (b), provides that when considering the denial of a license under Section 480 of the Code, the Board, in evaluating the rehabilitation of the applicant and his present eligibility for licensing or registration, will consider specific criteria, as follows:

a. The nature and severity of the act(s) or offense(s) under consideration as grounds for denial. Respondent's misappropriation crime was not trivial and demonstrated dishonesty. His DUI conviction was very serious, evidenced a disregard for public safety, and could well have led to the serious injury or death of himself or another person.

b. Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial under Section 480 [of the Code]. No such evidence was presented.

c. The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2). Respondent's misappropriation conviction is remote in time, a fact which would usually favor an applicant. However, the DUI conviction is less than three years old and Respondent is still on criminal probation. This indicates that Respondent's rehabilitation is not yet complete.

d. Whether the applicant has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the applicant. Respondent is currently in compliance with the terms and conditions of his probation.

e. Evidence, if any, of rehabilitation submitted by the applicant. Respondent provided character reference letters from his mother, his fiancé, and his employer, all attesting to his good character. He provided further proof from a gym owner that he has volunteered his personal-training services to aid disabled persons. He was a frank, straightforward witness who expressed sincere remorse for his criminal conduct.

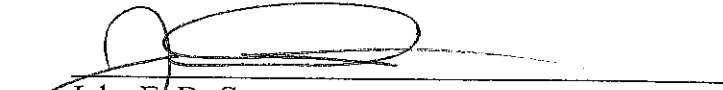
6. Considering these factors, Respondent has developed facts suggesting that he is in the process of becoming sufficiently rehabilitated and may well prove to be an appropriate future candidate for licensure. At this time, however, he remains on criminal probation for his DUI conviction. Although he is meeting the terms and conditions, those on probation have an incentive to obey the law, so little weight can be placed on compliance. *In Re Gossage (2000) 23 Cal.4th 1080, 1099.* Despite Respondent's sincere belief that he is not an alcoholic, his rehabilitation to date has not afforded him any substantial insight into his many years of prior alcohol abuse. As a result, Respondent cannot be licensed at this time without creating an undue risk to the public. More time is needed to determine whether he will continue on the path toward rehabilitation and better understand his history of impairment.

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ORDER

The application of James Donald Jackman for registration as a pharmacy technician is denied.

Dated: January 8, 2016



John E. DeCure
Administrative Law Judge
Office of Administrative Hearings

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7 *Attorneys for Complainant*

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. 5394

12 **JAMES DONALD JACKMAN**

STATEMENT OF ISSUES

13 Pharmacy Technician Registration Applicant

14 Respondent.

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17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about March 24, 2014, the Board received an application for a Pharmacy
23 Technician Registration from James Donald Jackman (Respondent). On or about March 20, 2014,
24 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and
25 representations in the application. The Board denied the application on December 19, 2014.

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1 **JURISDICTION**

2 3. This Statement of Issues is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code (Code) unless
4 otherwise indicated.

5 4. Section 4300, subdivision (c), states, in pertinent part:

6 "The board may refuse a license to any applicant guilty of unprofessional conduct. The
7 board may, in its sole discretion, issue a probationary license to any applicant for a license who is
8 guilty of unprofessional conduct and who has met all other requirements for licensure. . . ."

9 **STATUTORY AND REGULATORY PROVISIONS**

10 5. Section 480 states, in pertinent part:

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

13 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
14 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
15 board is permitted to take following the establishment of a conviction may be taken when the time
16 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an
17 order granting probation is made suspending the imposition of sentence, irrespective of a
18 subsequent order under the provisions of Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

19 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
20 benefit himself or herself or another, or substantially injure another.

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

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

26 "(b) Notwithstanding any other provision of this code, a person shall not be denied a
27 license solely on the basis that he or she has been convicted of a felony if he or she has obtained a
28 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of

1 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
2 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
3 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
4 Section 482.

5 "(c) Notwithstanding any other provisions of this code, a person shall not be denied a
6 license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,
7 1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed
8 pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the
9 dismissal."

10 6. Section 4301 states, in pertinent part:

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

18

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

24

25 "(l) The conviction of a crime substantially related to the qualifications, functions, and
26 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
27 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
28 substances or of a violation of the statutes of this state regulating controlled substances or

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

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

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

21 **FIRST CAUSE FOR DENIAL OF APPLICATION**

22 **(Convictions of Substantially Related Crimes)**

23 8. Respondent's application is subject to denial under section 480, subdivision (a)(1), in
24 conjunction with California Code of Regulations, title 16, section 1770, in that Respondent was
25 convicted of crimes substantially related to the qualifications, functions or duties of a registered
26 pharmacy technician, as follows:

27 a. On or about August 22, 2013, after pleading guilty, Respondent was convicted of one
28 misdemeanor count of violating Vehicle Code section 23152, subdivision (b) [driving while having

1 0.08% or more, by weight, of alcohol in his blood] in the criminal proceeding entitled *The People*
2 *of the State of California v. James Donald Jackman* (Super. Ct. San Bernardino County, 2013,
3 No. TVA1301408.) The Court sentenced Respondent to serve 79 days in San Bernardino County
4 Jail, ordered him to attend a 9 month alcohol program, and placed him on 36 months' probation,
5 with terms and conditions.

6 b. The circumstances surrounding the conviction are that on or about June 2, 2013, the
7 California Highway Patrol Department initiated a traffic enforcement stop after observing
8 Respondent's vehicle traveling at a high rate of speed. The officer approached Respondent's
9 vehicle on the passenger side and knocked on the window but Respondent ignored the knock and
10 kept looking straight ahead. The officer then opened the passenger's side door and immediately
11 smelled a strong odor of an alcoholic beverage emitting from within the vehicle. Respondent
12 failed to turn off his car, as directed by the police officer. The officer removed the keys from the
13 ignition and helped Respondent exit the vehicle. Respondent was unable to stand on his own.
14 Respondent submitted to a blood test resulting in a blood-alcohol concentration level of 0.25%.

15 **SECOND CAUSE FOR DENIAL OF APPLICATION**

16 **(Acts Involving Dishonesty, Fraud, or Deceit)**

17 9. Respondent's application is subject to denial under section 480, subdivision (a)(2), in
18 that Respondent committed acts involving dishonesty, fraud, or deceit with the intent to
19 substantially benefit himself, or substantially injure another, as follows:

20 a. On or about May 18, 2005, after pleading nolo contendere, Respondent was convicted
21 of one misdemeanor count of violating Penal Code 485 [misappropriation of lost property] in the
22 criminal proceeding entitled *The People of the State of California v. James Donald Jackman*
23 (Super. Ct. L.A. County, 2005, No. 5PA46348). The Court ordered Respondent to complete 20
24 days of Caltrans work and placed him on two years' probation, with terms and conditions. On or
25 about January 29, 2015, the Court dismissed the matter pursuant to Penal Code section 1203.4.

26 b. The circumstances surrounding the conviction are that on or about April 13, 2005, an
27 Arcadia police officer conducted a traffic enforcement stop on Respondent's vehicle. During a
28 search of Respondent's vehicle, the officer found three business signs in Respondent's trunk: one

1 blue Washington Mutual bank parking sign and two no-trespassing signs belonging to an office
2 building in Monrovia. Respondent was asked if he was aware that the three signs were probably
3 stolen. Respondent agreed that the signs were probably stolen but indicated that he did not steal
4 them.

5 **THIRD CAUSE FOR DENIAL OF APPLICATION**

6 **(Acts Warranting Denial of Licensure)**

7 10. Respondent's application is subject to denial under sections 4301, subdivision (p) and
8 480, subdivisions (a)(3)A and (a)(3)B), in that Respondent committed acts which if done by a
9 registered pharmacy technician, would be grounds for suspension or revocation of his license as
10 follows:

11 a. Respondent was convicted of crimes substantially related to the qualifications,
12 functions, or duties of a pharmacy technician which to a substantial degree evidence his present or
13 potential unfitness to perform the functions authorized by the license in a manner consistent with
14 the public health, safety, or welfare, in violation of sections 4031, subdivision (l), in conjunction
15 with California Code of Regulations, title 16, section 1770. Complainant refers to, and by this
16 reference incorporates, the allegations set forth above in paragraphs 8 and 9, as though set forth
17 fully.

18 b. Respondent committed acts involving dishonesty, fraud, or deceit, in violation of
19 section 4301, subdivision (f). Complainant refers to, and by this reference incorporates, the
20 allegations set forth above in paragraph 9, as though set forth fully.

21 c. Respondent used alcoholic beverages to an extent or in a manner dangerous or
22 injurious to himself, another person, or the public, in violation of section 4301, subdivision (h).
23 Complainant refers to, and by this reference incorporates, the allegations set forth above in
24 paragraphs 8, as though set forth fully.

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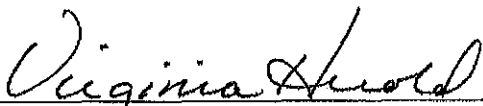
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PRAYER

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

1. Denying the application of James Donald Jackman for a Pharmacy Technician Registration; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 9/15/15


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

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