



California State Board of Pharmacy
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 BOARD OF PHARMACY

BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY
 DEPARTMENT OF CONSUMER AFFAIRS
 GOVERNOR EDMUND G. BROWN JR.

2016 DEC 28 PM 2:35

APPLICATION FOR VOLUNTARY SURRENDER OF PHARMACY TECHNICIAN LICENSE

PLEASE PRINT IN BLACK OR BLUE INK OR TYPE YOUR RESPONSES

Name: <u>Juliano Lepadat</u>	Case No. <u>AC 5656</u>
Address of Record: <u>216 Willow Creek Drive</u> <u>Folsom, CA 95630</u>	

Pursuant to the terms and conditions of my probation with the California State Board of Pharmacy (Board) in Case No. AC 5656, I hereby request to surrender my pharmacy technician license, License No. 136098. 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 pharmacy technician 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

[Signature]
 Executive Officer's Approval

12/28/2016
 Date

1/3/17
 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, 1825 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 Accusation Against:

JULIANO SAMUEL LEPADAT,

Pharmacy Technician Registration
No. TCH 136098

Respondent.

Case No. 5656

OAH No. 2016070638

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 at 5:00 p.m. on December 7, 2016.

It is so ORDERED on November 7, 2016.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

Amy Gutierrez, Pharm.D.
Board President

BEFORE THE
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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation Against:

JULIANO SAMUEL LEPADAT,

Pharmacy Technician Registration
No. TCH 136098

Respondent.

Case No. 5656

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PROPOSED DECISION

This matter was heard before Administrative Law Judge Tiffany L. King, State of California, Office of Administrative Hearings, on September 19, 2016, in Sacramento, California.

Joshua B. Eisenberg, Deputy Attorney General, represented Virginia Herold (complainant), Executive Officer, Board of Pharmacy (Board), Department of Consumer Affairs.

Juliano Samuel Lepadat (respondent) was present and represented himself.

Evidence was received, the record was closed, and the matter was submitted for decision on September 19, 2016.

FACTUAL FINDINGS

1. On December 23, 2013, the Board issued Pharmacy Technician Registration Number TCH 136098 (registration) to respondent. Respondent's registration was in full force and effect at all times relevant to the allegations set forth in the Accusation, and expires on August 31, 2017, unless renewed. There is no history of prior discipline of the registration.

2. Complainant signed the Accusation on June 13, 2016, solely in her official capacity. The Accusation alleges cause exists to discipline respondent's registration based upon a 2015 criminal conviction for driving under the influence of alcohol (DUI), and related

allegations for dangerous use of alcohol and having multiple convictions involving the use of alcohol.

Criminal Convictions

3. On December 13, 2006, in the Santa Barbara County Superior Court, Case No. 1215115, respondent was convicted, upon a no contest plea, of violating of Vehicle Code section 23152, subdivision (a) (driving a vehicle while under the influence of alcohol), a misdemeanor. The court suspended imposition of sentence, and placed respondent on three years' informal probation. The court also ordered respondent to serve three days in the county jail, pay fines and fees, and complete a nine-month alcohol counseling program for first offenders. His driving privileges were suspended for one year. Respondent's conviction arose out of his arrest for suspicion of driving under the influence on October 6, 2006.

4. On June 28, 2007, in the San Diego County Superior Court, Case No. M022306, respondent was convicted, upon a no contest plea, of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol level of .08 percent or higher), a misdemeanor, and admitted an enhancement for a prior conviction of the same. The court placed respondent on five years' summary probation, suspended his driving privileges for one year, and ordered him to serve nine days in the Sheriff's Work Program. He was also ordered to pay fines and fees, to complete an 18-month multiple conviction program, and to participate in any treatment or rehabilitation recommended by the program. Respondent's conviction arose out of his arrest for suspicion of driving under the influence on May 13, 2007.

5. On August 11, 2015, in the Sacramento Superior County Court, Case No. 15M08708, respondent was convicted, upon a no contest plea, of violating Vehicle Code section 23152, subdivision (b) (driving a vehicle with a blood alcohol level of .08 percent or higher), a misdemeanor. He also admitted two prior convictions for the same, and a sentencing enhancement for driving with a blood alcohol content of .15 percent or greater. The court suspended imposition of sentence and placed respondent on five years' informal probation. It further ordered respondent to serve 135 days in the county jail or work release program, pay fines and fees, and attend a multiple offender program. Lastly, the court revoked respondent's driver's license for three years and ordered an ignition interlock device be installed on his vehicle.

The circumstances underlying the 2015 conviction occurred in Folsom on June 6, 2015. At approximately 2:40 a.m., respondent was driving alone when he collided with a fire hydrant causing the driver's side airbag to deploy. When police arrived at the scene, one officer observed water spilling out from the fire hydrant and detected the smell of gasoline. Once respondent exited his vehicle, the officer observed that his eyes were "extremely red and watery" and he smelled "a strong odor of alcoholic beverage coming from his person." Respondent admitted that, between approximately 10:00 p.m. and 2:00 a.m., he had consumed six hard cider alcoholic beverages and one glass of white wine while at his

mother's house. Respondent's speech was slurred and he said, "Did I do that? Did I hurt anyone? I feel so bad, I knew I shouldn't have drove." Then officer then administered a series of Field Sobriety Tests (FSTs), all of which respondent failed. A subsequent analysis of a sample of respondent's blood revealed his blood alcohol level was .20 percent at the time of arrest.

Rehabilitation, Mitigation and Aggravation

6. Respondent is 28 years old and married. He and his wife recently purchased their first home and plan to start a family.

7. With regard to his DUIs in 2006 and 2007, respondent explained that he was living in San Diego and attending college during that time. His parents were going through a contentious divorce and respondent had a difficult time dealing with it. He admitted he was "going out and partying a lot," consuming alcohol regularly, and generally "not paying attention to his school work." Respondent did not try to excuse his behavior, and admitted he acted like "an idiot." He stopped drinking "for a while" after the 2007 DUI; however, respondent resumed drinking socially again sometime after that.¹

8. Respondent testified he "completely changed" his life after the 2007 DUI conviction. He met his wife, Tatiana, who is also a pharmacy technician. He found a job as a pharmacy technician at a retail pharmacy, where he was considered a hard worker and received positive reviews. Following the 2007 conviction, he had no further run-ins with law enforcement until his 2015 DUI conviction.

9. Respondent accepted full responsibility for the 2015 DUI, testifying that he "messed up big time that night." He expressed sincere remorse for his behavior and for the pain he caused his wife. He has not consumed alcohol since June 6, 2015, the night of the incident.

10. In February 2016, he enrolled in an 18-month multiple-offender program at Safety Center, Inc., as required by his probation. The course consists of two two-hour classes per week for the first two months, followed by one two-hour class per week for the remainder of the course. Each class includes a group session followed by a one-on-one session with a counselor. Through this process, respondent has come to terms with his relationship with alcohol. Respondent is dedicated to maintaining his sobriety, having recognized his poor decision-making when he is under the influence. Respondent testified he presently does not have an urge to drink. If he had such an urge, he would resist it.

11. Respondent attended a few Alcoholics Anonymous (AA) meetings immediately following the 2015 DUI. However, he stopped going because he was

¹ The record did not establish how long respondent abstained from alcohol following the 2007 DUI.

uncomfortable and did not feel he could relate to the other attendees who were already vested in AA's 12-step program. The group sessions respondent attends as part of the multiple-offender program are similar to AA, but without the 12-step components.

12. In June 2016, respondent accepted a pharmacy technician position in the pharmacy benefit management (PBM) division of Health Net, a job he has coveted since first receiving his pharmacy technician registration. In that position, he reviews prescription claims to ensure they comply with the insurance protocols. As it is not a retail position, he does not have access to controlled substances at work. Respondent informed Health Net of his conviction history before he was hired. He meets one-on-one with his supervisor on a monthly basis and has received positive feedback.

13. Respondent has complied with all the terms and conditions of his current probation, on which he will remain until August 2020. He testified credibly that the risk of hurting his wife and career serves as his motivation to maintain his sobriety and continue moving in the right direction.

14. Respondent's wife, Tatiana Lepadat, testified on his behalf. She is his primary support and stated they spend most of their time outside of work together. Mrs. Lepadat corroborated that respondent has maintained his sobriety since June 2015. Although she has an occasional drink with friends, she does not drink alcohol at home or socially when she is out with respondent. Mrs. Lepadat testified to respondent's regret for his past actions and his dedication to continue making positive changes in his life going forward.

15. Respondent submitted a letter of support from his prior pharmacy supervisor, Diane Cogburn, which was received in evidence and considered to the extent permitted by Government Code section 11513, subdivision (d).² Respondent testified credibly that Ms. Cogburn was aware of his conviction history. In her letter, Ms. Cogburn stated she worked with respondent for two years at the retail pharmacy, and was his pharmacy supervisor for the last few months there. She described respondent as a quick learner and hard worker with a great work ethic. She identified customer service as one of his strong points, noting that her customers still ask about him even though he no longer works there. Ms. Cogburn continued that respondent was professional and on-time, skilled at multi-tasking, and open to constructive criticism. She concluded that respondent was a well-rounded individual and a "very genuine and sincere person."

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² Government Code section 11513, subdivision (d), provides, in pertinent part, that "hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

Discussion

16. California Code of Regulations, title 16, section 1769, subdivision (c), sets 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; and
- (5) Evidence, if any, of rehabilitation submitted by the licensee.

17. Applying these criteria to the instant matter indicates that respondent's rehabilitation is substantial, but is still in progress. First, operating any vehicle while under the influence of alcohol always has potentially serious consequences. Respondent has committed three DUIs in the last decade. Regarding the most recent incident, the potential for injury was multiplied by the facts that respondent's blood alcohol level was more than twice the legal limit and that he struck a fire hydrant with force sufficient to trigger his driver's side airbag. Second, respondent's 2015 conviction is barely a year old and he is scheduled to remain on criminal probation for four more years. (*In re Gossage* (2000) 23 Cal.4th 1080, 1099 [when a person is on criminal probation or parole, rehabilitation efforts are accorded less weight "since persons under the direct supervision of correctional authorities are required to behave in exemplary fashion..."].)

18. Notwithstanding the above, respondent offered evidence of meaningful and continuing rehabilitation. He is complying with the terms and conditions of his criminal probation. He is currently attending an 18-month program for multiple DUI offenders. Other evidence indicates that respondent is making sincere efforts to turn his life around. He has taken full responsibility for his wrongdoing and criminal conduct. He was forthright with his employer regarding his conviction history and is performing well at work. In his current job, he does not have access to controlled substances. With the support of his wife, respondent has maintained his sobriety for over a year. He expressed sincere remorse and an understanding of the effects of alcohol on his decision-making and conduct.

19. When all the evidence is considered, it would be consistent with public health, safety, and welfare to place respondent on probation for five years under the terms and conditions set forth below. Pursuant to the Board's Disciplinary Guidelines, it is also appropriate to include an actual 90-day suspension and certification requirement as part of the probation.

Costs

20. Complainant has requested that respondent be ordered to pay a total of \$2,591.50 in costs. In support of this request, complainant submitted: (1) a certification seeking investigative and other costs in the amount of \$29; and (2) a Certification of Prosecution Costs and Declaration of Joshua B. Eisenberg, seeking costs of prosecution incurred by the Office of the Attorney General in the amount of \$2,562.50. Attached to the Certification of Prosecution Costs was a computer printout entitled Matter Time Activity by Professional Type, which described the general tasks performed, the time spent on each task, and the hourly rate or other compensation for the service. At the hearing, respondent did not object to complainant's request for costs. When all the information submitted in support of the costs is considered, complainant established that the requested costs are reasonable in light of the allegations set forth in the Accusation. Complainant's request regarding costs is more fully addressed in the Legal Conclusions below.

LEGAL CONCLUSIONS

1. Complainant bears the burden of proving each of the grounds for discipline alleged in the Accusation by clear and convincing evidence. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853.) Clear and convincing evidence requires proof that is so clear as to leave no substantial doubt and sufficiently strong to command the unhesitating assent of every reasonable mind. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 594.)

2. Business and Professions Code section 4301 provides, in part, that:

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

[¶] ... [¶]

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

3. 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.”

4. Respondent’s DUI conviction evidenced his present or potential unfitness to perform the functions authorized by his registration in a manner consistent with the public health, safety, and welfare. (*Sulla v. Board of Registered Nursing* (2012) 205 Cal.App.4th 1195.) As the court in *Griffiths v. Superior Court* (2002) 96 Cal.App.4th 757, 770, explained:

Convictions involving alcohol consumption reflect a lack of sound professional and personal judgment that is relevant to a physician’s fitness and competence to practice medicine. Alcohol consumption quickly affects normal driving ability, and driving under the influence of alcohol threatens personal safety and places the safety of the public in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to judge speed, dimensions, and distance. [Citation.]

Driving while under the influence of alcohol also 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.

5. The court’s reasoning in *Griffiths* applies in this case. Consequently, respondent’s 2015 DUI conviction is substantially related to the qualifications, functions, and duties of a pharmacy technician, and constitutes cause to discipline respondent’s registration under Business and Professions Code section 4301, subdivision (l).

6. Cause exists to revoke respondent’s license pursuant to Business and Professions Code section 4301, subdivision (h), on the grounds of unprofessional conduct in that, on June 6, 2015, respondent consumed alcoholic beverages to the extent or in a manner as to be dangerous or injurious to both himself and members of the public as explained in Factual Finding 5.

7. Cause exists to revoke respondent's license pursuant to Business and Professions Code section 4301, subdivision (k), on the grounds of unprofessional conduct in that respondent was convicted of three misdemeanors involving the use of alcohol as explained in Factual Findings 3 through 5.

8. The Board's Disciplinary Guidelines (Rev. 10/2007) set forth categories of violations and recommended penalties. Violations of section 4301, subdivisions (h), (k) and (l), constituting unprofessional conduct, are Category III violations, where the minimum penalty is revocation stayed, 90 days actual suspension, and three to five years' probation. The maximum penalty is revocation. As set forth in Factual Findings 16 through 19, respondent submitted sufficient evidence of rehabilitation to demonstrate that it would be consistent with the public health, safety, and welfare to allow him to retain his registration on a probationary basis subject to the terms and conditions set forth below.

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

10. As set forth in Factual Finding 20, complainant seeks \$2,591.50 in costs. When all the *Zuckerman* factors are considered, this cost amount is reasonable.

ORDER

Pharmacy Technician Registration Number TCH 136098 issued to respondent Juliano Samuel Lepadat is revoked; however, the revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. **Suspension and Certification Prior to Resuming Work.** Pharmacy Technician Registration Number TCH 136098 is suspended for a period of **90 days** commencing on the effective date of this decision. Thereafter, respondent shall remain suspended from working as a pharmacy technician until he is certified as defined by Business and Professions Code section 4202, subdivision (a)(4), and provides satisfactory proof of certification to the Board. Respondent shall not resume working as a pharmacy technician until notified by the Board. Failure to achieve certification within one (1) year shall be considered a violation of probation. Respondent shall not resume working as a pharmacy technician until notified by the Board.

During suspension, respondent shall not enter any pharmacy area or any portion of any other Board-licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises by the Board in which he 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.

2. **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 hours of such occurrence:

- a. 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;
- b. a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment;
- c. a conviction of any crime; or
- d. discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's pharmacy technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

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

3. **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.

4. **Interview with the Board.** Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the Board or its designee, 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 at two or more scheduled interviews with the Board or its designee during the period of probation, shall be considered a violation of probation.

5. **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.

6. **Notice to Employers.** During the period of probation, respondent shall notify all present and prospective employers of the decision in case number 5656 and the terms, conditions and restrictions imposed on respondent by the decision, as follows:

Within 30 days of the effective date of this decision, and within 15 days of respondent undertaking any new employment, respondent shall cause his direct supervisor, pharmacist-in-charge (including each new pharmacist-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 case number 5656 and the 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, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the decision in case number 5656 in advance of the respondent commencing work at each pharmacy. A record of this notification must be provided to the Board upon request.

Furthermore, within 30 days of the effective date of this decision, and within 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 case number 5656 and the terms and conditions imposed thereby. It shall be 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 pharmacy technician or in any position for which a pharmacy technician license is a requirement or criterion for employment, whether the respondent is considered an employee, independent contractor or volunteer.

7. **Reimbursement of Board’s Costs.** As a condition precedent to successful completion of probation, respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,591.50. Respondent shall make said payments according to a schedule approved by the Board or its designee. There shall be no deviation from this schedule absent prior written approval by the Board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation. The filing of bankruptcy by respondent shall not relieve respondent of his responsibility to reimburse the Board its costs of investigation and prosecution.

8. **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.

9. **Status of License.** Respondent shall, at all times while on probation, maintain an active, current pharmacy technician 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 pharmacy technician 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.

10. **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 pharmacy technician 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 pharmacy technician license to the Board within 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 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.

11. Notification of a Change in Name, Residence Address, Mailing Address or Employment. Respondent shall notify the Board in writing within 10 days of any change of employment. Said notification shall include the reasons for leaving, the address of the new employer, the name of the supervisor and owner, and the work schedule if known. Respondent shall further notify the Board in writing within 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.

12. Tolling of Probation. Except during periods of suspension, respondent shall, at all times while on probation, be employed as a pharmacy technician in California for a specific number of hours per calendar month to be determined by the Board or its designee. 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 pharmacy technician in California for the specific minimum number of hours per calendar month determined by the Board, respondent must notify the Board in writing within 10 days of cessation of work and must further notify the Board in writing within 10 days of the resumption of the 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 36 months.

"Cessation of work" means calendar month during which respondent is not working as a pharmacy technician, as defined in Business and Professions Code section 4115 for at least the minimum hours determined by the Board. "Resumption of work" means any calendar month during which respondent is working as a pharmacy technician as defined by Business and Professions Code section 4115 for at least the minimum number of hours determined by the Board.

13. Violation of Probation. If a 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.

14. **Completion of Probation.** Upon written notice by the Board indicating successful completion of probation, respondent's pharmacy technician license will be fully restored.

15. **No Ownership of Licensed Premises.** Respondent shall not own, have any legal or beneficial interest in, or serve as a manager, administrator, member, officer, director, trustee, associate, or partner of any business, firm, partnership, or corporation currently or hereinafter licensed by the Board. Respondent shall sell or transfer any legal or beneficial interest in any entity licensed by the Board within ninety (90) days following the effective date of this decision and shall immediately thereafter provide written proof thereof to the Board. Failure to timely divest any legal or beneficial interest(s) or provide documentation thereof shall be considered a violation of probation.

16. **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.

17. **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 pharmacy technician until notified by the Board in writing.

During suspension, respondent shall not enter any pharmacy area or any portion of or any other Board licensed premises (wholesaler, veterinary food-animal drug retailer or any other distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and devices or controlled substances are maintained. Respondent shall not do any act involving drug selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent manage, administer, or assist any licensee of the Board. Respondent shall not have access to or control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled substances. Respondent shall not resume work until notified by the Board.

Respondent shall not direct, control or perform any aspect of the practice of pharmacy. Subject to the above restrictions, respondent may continue to own or hold an interest in any licensed premises in which he or she holds an interest at the time this decision becomes effective unless otherwise specified in this order.

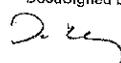
Failure to comply with this suspension shall be considered a violation of probation.

18. **Work Site Monitor.** Within ten (10) days of the effective date of this decision, respondent shall identify a work site monitor, for prior approval by the Board, who shall be responsible for supervising respondent during working hours. Respondent shall be responsible for ensuring that the work site monitor reports in writing to the Board quarterly. Should the designated work site monitor determine at any time during the probationary period that respondent has not maintained sobriety, he or she shall notify the Board immediately, either orally or in writing as directed. Should respondent change employment, a new work site monitor must be designated, for prior approval by the Board, within ten (10) days of commencing new employment. Failure to identify an acceptable initial or replacement work site monitor, or to ensure quarterly reports are submitted to the Board, shall be considered a violation of probation.

19. **Notification of Departure.** Prior to leaving the probationary geographic area designated by the Board or its designee for a period greater than twenty-four (24) hours, respondent shall notify the Board verbally and in writing of the dates of departure and return. Failure to comply with this provision shall be considered a violation of probation.

20. **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 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: October 10, 2016

DocuSigned by:

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TIFFANY L. KING
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**

12 In the Matter of the Accusation Against:

Case No. 5656

13 **JULIANO SAMUEL LEPADAT**
216 Willow Creek Drive
14 Folsom, CA 95630

A C C U S A T I O N

15 **Pharmacy Technician Registration No. TCH**
136098

16 Respondent.

17
18 Virginia Herold ("Complainant") alleges:

19 **PARTIES**

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

22 2. On or about December 23, 2013, the Board issued Pharmacy Technician Registration
23 Number TCH 136098 to Juliano Samuel Lepadat ("Respondent"). The registration was in full
24 force and effect at all times relevant to the charges brought herein and will expire on August 31,
25 2017, unless renewed.

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1 JURISDICTION

2 3. Business and Professions Code ("Code") section 4300 provides, in pertinent part, that
3 every license issued by the Board is subject to discipline, including suspension or revocation.

4 4. Code section 4300.1 states:

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

11 STATUTORY PROVISIONS

12 5. Code section 4301 states, in pertinent part:

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

17 ...

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

23 ...

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

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

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

3 **COST RECOVERY**

4 6. Code section 125.3 provides, in pertinent part, that the Board may request the
5 administrative law judge to direct a licentiate found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Conviction of a Crime)**

10 7. Respondent is subject to discipline pursuant to Code section 4301(d), on the grounds
11 of unprofessional conduct, in that on or about August 11, 2015, in the case of *People v. Juliano*
12 *Lepadat* (Super. Ct. Sacramento County, Case No. 15M08708), Respondent was convicted by the
13 Court on his plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a
14 blood alcohol level of .08% or higher), a misdemeanor, with two prior convictions of the same, as
15 set forth below in paragraph 9, and an enhancement of Vehicle Code section 23578 (having a
16 blood alcohol level of .15% or higher). The circumstances of the crime were that on or about
17 June 6, 2015, Respondent drove a vehicle while having a blood alcohol level of 0.20% and
18 collided with a fire hydrant. The crime is substantially related to the qualifications, functions, or
19 duties of a pharmacy technician.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Dangerous Use of Alcohol)**

22 8. Respondent is subject to discipline pursuant to Code section 4301(h), on the grounds
23 of unprofessional conduct, in that Respondent consumed alcohol to the extent or in a manner as to
24 be dangerous or injurious to himself and the public, in that on or about June 6, 2015, Respondent
25 drove a vehicle with a blood alcohol level of .20%, as more particularly set forth above in
26 paragraph 7.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Multiple Convictions Involving the Use of Alcohol)

3 9. Respondent is subject to discipline pursuant to Code section 4301(k), on the grounds
4 of unprofessional conduct, in that Respondent was convicted by the Court of more than one
5 misdemeanor or any felony involving the use, consumption, and self administration of dangerous
6 drugs and/or alcohol, or any combination of those substances. On or about December 13, 2006,
7 in the case of *People v. Juliano Lepadat* (Super. Ct. Santa Barbara County, Case No. 1215115),
8 Respondent was convicted by the court of violating Vehicle Code section 23152(a) (driving a
9 vehicle while under the influence of alcohol), a misdemeanor. On or about June 28, 2007, in the
10 case of *People v. Juliano Lepadat* (Super. Ct. San Diego County, Case No. M022306),
11 Respondent was convicted by the court on his plea of no contest of violating Vehicle Code
12 section 23152(b) (driving a vehicle with a blood alcohol level of .08% or higher), a misdemeanor,
13 with a prior conviction of the same, as set forth herein. The circumstances of the crime were that
14 on or about May 13, 2007, Respondent drove a vehicle while having a blood alcohol level of
15 .08% or higher. On or about August 11, 2015, in the case of *People v. Juliano Lepadat* (Super.
16 Ct. Sacramento County, Case No. 15M08708), Respondent was convicted by the Court on his
17 plea of nolo contendere of violating Vehicle Code section 23152(b) (driving with a blood alcohol
18 level of .08% or higher), a misdemeanor with two prior convictions of the same, as set forth
19 above in paragraph 7.

20 PRAYER

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

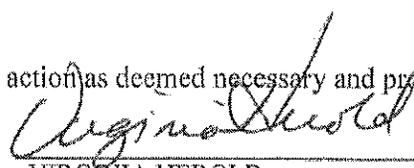
- 23 1. Revoking or suspending Pharmacy Technician Registration Number TCH 136098,
24 issued to Juliano Samuel Lepadat;
- 25 2. Ordering Juliano Samuel Lepadat to pay the Board of Pharmacy the reasonable costs
26 of the investigation and enforcement of this case, pursuant to Business and Professions Code
27 section 125.3; and,

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

DATED: 01/13/16



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

SA2015105688
Accusation Against Juliano Lepadat; Case No. 5656.docx