EDMUND G. BROWN JR., Attorney General
of the State of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
DIANE DE KERVOR, State Bar No. 174721
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2611
Facsimile: (619) 645-2061

Attorneys for Complainant

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

In the Matter of the Accusation Against: FILIMON M. LOPEZ 29757 Niguel Road, Apt. H Laguna Niguel, CA 92677 Pharmacy Technician Registration No. TCH 35419 Respondent.	Case No. 3314 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about December 11, 2000, the Board of Pharmacy issued Pharmacy Technician Registration Number TCH 35419 to Filimon M. Lopez (Respondent). The Pharmacy Technician Registration will expire on May 31, 2010, unless renewed.

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JURISDICTION

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

4. Code section 118, subdivision (b), states, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Code section 482 states:

> Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:
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> . . . .
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> (b) Considering suspension or revocation of a license under Section 490.
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> Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

6. Section 490 of the Code states, in pertinent part:

> A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. . . .

7. Code section 493 states:

> Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.
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> As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

8. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

9. Section 4060 of the Code states:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor pursuant to Section 3640.7,or furnished pursuant to a drug order issued by a certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section 2836.1, or a physician assistant pursuant to Section 3502.1, or naturopathic doctor pursuant to Section 3640.5, or a pharmacist pursuant to either subparagraph (D) of paragraph (4) of, or clause (iv) of subparagraph (A) of paragraph (5) of, subdivision (a) of Section 4052. This section shall not apply to the possession of any controlled substance by a manufacturer, wholesaler, pharmacy, pharmacist, physician, podiatrist, dentist, optometrist, veterinarian, naturopathic doctor, certified nurse-midwife, nurse practitioner, or physician assistant, when in stock in containers correctly labeled with the name and address of the supplier or producer.

Nothing in this section authorizes a certified nurse-midwife, a nurse practitioner, a physician assistant, or a naturopathic doctor, to order his or her own stock of dangerous drugs and devices.

10. Section 4300 of the Code states that "(a) Every license issued may be suspended or revoked."

11. Section 4301 of the Code states:

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

. . . .

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

. . . .

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

. . . .

(j) The violation of any of the statutes of this state, or any other state, or of the United States regulating controlled substances and dangerous drugs.

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

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

. . . .

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

. . . .

12. California Code of Regulations, title 16, section 1769 states, in pertinent part:

(b) When considering the suspension or revocation of a facility or a personal license on the ground that the licensee or the registrant has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) Evidence, if any, of rehabilitation submitted by the licensee.

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

> 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.

COST RECOVERY

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

DRUG

15. Clonazepam, generic name for Klonopin, is a Schedule IV controlled substance under California Health and Safety Code section 11057(d)(7), a dangerous drug pursuant to Business and Professions Code section 4022, and is used to treat seizures.

FIRST CAUSE FOR DISCIPLINE

(January 14, 2005 Criminal Convictions - Driving Under the Influence on October 20, 2003)

16. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section 4301, subdivisions (h), (k) and (l) as well as 490 and 493 for using alcoholic beverages to an extent or in a manner as to be dangerous to himself or others and for multiple criminal convictions involving the use of alcoholic beverages and that are substantially related to the qualifications, functions, and duties of a Pharmacy Technician. On January 14, 2005, in a case entitled *People vs. Filimon Martin Lopez* (Orange County Superior Court Case No. 03CM08936MA), Respondent was convicted by a plea of guilt to a violation of Vehicle Code Sections 23152(a) (driving under the influence), a misdemeanor, and 23152(b) (driving under the influence with a blood alcohol content of .08% or higher), a misdemeanor.

17. The facts and circumstances surrounding this cause for discipline are as follows: On October 20, 2003 at approximately 1:41 a.m., a highway patrol officer witnessed Respondent driving his vehicle on the freeway at approximately 85 miles per hour in a "serpentine manner striking the lane delineators on both sides of the vehicle on several occasions." Respondent was pulled over, failed the field sobriety test, and a subsequent blood test was positive for the presence of alcohol above the legal limit.

18. On January 14, 2005, Respondent was sentenced to three years informal probation under certain terms and conditions, including a six month level 2 first time offender alcohol program, a mothers against drunk driving impact panel, a license restriction as well as $697.00 in fines and fees.

SECOND CAUSE FOR DISCIPLINE

**(May 18, 2005 Criminal Convictions -
Second Degree Burglary and False Representation to Peace Officer on May 16, 2005)**

19. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section 4301, subdivisions (f) and (l) as well as 490 and 493 for commission of an act involving moral turpitude and dishonesty and criminal convictions that are substantially related to the qualifications, functions, and duties of a Pharmacy Technician. On May 19, 2005, in a case entitled *People vs. Filimon Martin Lopez* (Orange County Superior Court Case No. 05SM02269), Respondent was convicted by a plea of guilt to a violation of Penal Code sections 459-460(b) (second degree burglary), a misdemeanor, and 148.9(a) (false representation to peace officer), a misdemeanor.

20. The facts and circumstances surrounding this cause for discipline are as follows: Respondent admitted that "on May 16, 2005, in Orange County, he willfully and unlawfully entered Ralphs with the intent to commit a theft and did falsely identified [sic] himself to a peace officer lawfully engaged in his duties." The police report reflects that on May 16, 2005, at or about 11:05 p.m., loss prevention officers in Ralphs watched Respondent take an alcoholic beverage in a can from the store, pour the can out in the store, take a bottle of vodka from the store, pour the vodka into the can, and then walk out of the store without paying for

either item. Respondent was apprehended by the store's loss prevention officer and subsequently the police. Respondent had no money or identification on his person when he went into the store.

21. Respondent identified himself as "Martin Gomez"and admitted the theft to the police. However, he told the officer that he had stolen the items to bring to a man who told him he would pay him $20.00 if he performed this very act. He also told the officer that he was an illegal alien who just paid someone to smuggle him into the country. When questioned why he had a Volkswagon car key on his person, Respondent told the officer he found it. The officer went back to the store parking lot, located a Volkswagon, and ran the registration. By tracing the driver's license back to Respondent, he was able to determine that Martin Gomez was really Filimon Lopez.

22. On May 18, 2005, Respondent was sentenced to 10 days in jail, placed on three years informal probation under certain terms and conditions, including an order to stay away from the Ralphs store in Laguna Niguel, and to pay $130.00 in fines and fees, and to pay restitution to the store.

THIRD CAUSE FOR DISCIPLINE

(August 8, 2005 Criminal Convictions - Petty Theft and Possession of a Controlled Substance Without a Prescription on May 14, 2005)

23. Grounds exist to revoke Respondent's license pursuant to Code section 4300, section 4301, subdivisions (f), (j), (l), and (o) as well as 490 and 493 for commission of an act involving moral turpitude and dishonesty, criminal convictions that are substantially related to the qualifications, functions, and duties of a Pharmacy Technician, and a violation of drug laws. On August 8, 2005, in a case entitled *People vs. Filimon Martin Lopez* (Orange County Superior Court Case No. 05sm02800), Respondent was convicted by a plea of guilt to a violation of Penal Code section 484(A)-488 (petty theft), a misdemeanor, and Business and Professions Code section 4060 (possess controlled substance without a prescription), a misdemeanor.

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24. The facts and circumstances surrounding this cause for discipline are as follows: Respondent admitted that "on May 14, 2005, he took and stole the personal property of Gelson's Market with the intent to permanently deprive it. I also possessed Klonopin without a prescription." The police report reflects that on May 14, 2005, at 1:45 p.m., Respondent switched the price tags on a package of sushi with a cheaper item at Gelson's Market, paid for the cheaper item, and then walked out of the store. He was apprehended by security agents at the store, who were there to watch out for Respondent because he frequently wandered around the Gelson's store on his lunch break from Sav-On and was suspected of shoplifting in the past. The security guards arrested Respondent and found 5 tablets of Klonopin in Respondent's pockets. When Respodent was subsequently arrested by the police, he admitted "I'm guilty. I made a stupid mistake. I replaced a tag for a smaller price." He also admitted that he had shoplifted from the store in the past. When asked if he had a prescription for the Klonopin, Respondent said "no, I bought them from a guy. I forgot they were in my pocket."

25. On May 18, 2005, Respondent was sentenced to 30 days in jail or to Cal Trans in lieu of jail, to three years informal probation under certain terms and conditions, including an order to stay away from the Gelson's store, to pay $120.00 in fines and fees, and to pay restitution to the store. On August 31, 2005, the Cal Trans order was vacated due to medical proof of inability to comply, and Respondent was ordered to complete 45 days of community service.

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:

A. Revoking or suspending Pharmacy Technician Registration Number TCH 35419, issued to Filimon M. Lopez.

B. Ordering Filimon M. Lopez to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

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

DATED: 9/17/09

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