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8		RE THE
9	· - · · · ·	PHARMACY CONSUMER AFFAIRS
10.	STATE OF C	CALIFORNIA
11	In the Matter of the Petition to Revoke	Case No. 3800
12	Probation Against,	OAH No. L2006070473
13	ANDREW ALBERT ASARO	PETITION TO REVOKE PROBATION
14	10108 Calle Marinero, #36 Spring Valley, CA 91977	FEITHON TO REVOKE FROBATION
15	Pharmacy Technician Registration	
16	No. TCH 56928	
17	Respondent.	
18		
19	Complainant alleges:	•
20	PAF	TIES.
21	1. Virginia Herold (Complainant) bring	gs this Petition to Revoke Probation solely in her
22	official capacity as the Executive Officer of the	Board of Pharmacy, Department of Consumer
23	Affairs.	• •
24		
24		d of Pharmacy issued Pharmacy Technician
	2. On or about June 21, 2004, the Boar	d of Pharmacy issued Pharmacy Technician oert Asaro (Respondent). The Pharmacy
25	2. On or about June 21, 2004, the Boar Registration Number TCH 56928 to Andrew Al	pert Asaro (Respondent). The Pharmacy
25 26	2. On or about June 21, 2004, the Boar Registration Number TCH 56928 to Andrew Al Technician Registration expired on February 29	pert Asaro (Respondent). The Pharmacy
25	2. On or about June 21, 2004, the Boar Registration Number TCH 56928 to Andrew Al	pert Asaro (Respondent). The Pharmacy

#### JURISDICTION

- 3. This Petition to Revoke Probation 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 (Code) unless otherwise indicated.
- 4. Section 4300, subdivision (a) of the Code provides that every license issued by the Board may be suspended or revoked.
- 5. Following an administrative hearing in the disciplinary action entitled "In the Matter of the Accusation Against Andrew Albert Asaro," Office of Administrative Hearings (OAH) case number L2006070473, the administrative law judge issued a proposed decision, which was adopted by the Board and became effective May 2, 2007, in which Respondent's Pharmacy Technician Registration was revoked. However, the revocation was stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

#### FIRST CAUSE TO REVOKE PROBATION

(Failure to Obtain Certification by the Pharmacy Technician Certification Board)

6. At all times after the effective date of Respondent's probation, Condition A stated:

Respondent shall be suspended from working as a pharmacy technician until he is certified by the Pharmacy Technician Certification Board (PTCB) and provides satisfactory proof of certification to the Board.

7. Respondent's probation is subject to revocation because he failed to comply with Probation Condition A, referenced above, in that Respondent did not provide proof of PTCB certification to the Board.

### SECOND CAUSE TO REVOKE PROBATION

(Failure to Report Quarterly to the Board)

8. At all times after the effective date of Respondent's probation, Condition C stated:

Respondent shall report to the Board quarterly. The report shall be made either in person or in writing, as directed. Respondent shall state under penalty of perjury whether there has been compliance with all the terms and conditions of probation. If the final probation report is not made as directed, probation shall be extended automatically until such time as the final report is made and accepted by the Board.

1	9. Respondent's probation is subject to revocation because he failed to comply with
2	Probation Condition C, referenced above, in that Respondent has not provided any quarterly
3	reports to the Board since the start of probation.
4	THIRD CAUSE TO REVOKE PROBATION
5	(Failure to Appear for Interviews With the Board Upon Request)
6	10. At all times after the effective date of Respondent's probation, Condition D stated:
7	Upon receipt of reasonable notice, Respondent shall appear in person for
8	interviews with the Board upon request at various intervals at the location determined by the Board. Failure to appear for a scheduled interview without prior notification to
Board staff shall be considered a violation of probation.	Board staff shall be considered a violation of probation.
0	11. Respondent's probation is subject to revocation because he failed to comply with
1	Probation Condition D, referenced above, in that Respondent did not appear as requested for
2	probation office conferences scheduled for May 10, 2007, and July 5, 2007, nor did he provide
3	prior notification to the Board that he would not be able to attend the meetings.
4	FOURTH CAUSE TO REVOKE PROBATION
.5	(Failure to Submit Cost Recovery Payments)
.6	(Failure to Submit Cost Recovery Payments)  12. At all times after the effective date of Respondent's probation, Condition G stated:
1	12. At all times after the effective date of Respondent's probation, Condition G stated:  Respondent shall pay to the Board its costs of investigation and prosecution in
6	12. At all times after the effective date of Respondent's probation, Condition G stated:
6	12. At all times after the effective date of Respondent's probation, Condition G stated:  Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,548.50. Respondent shall make said payments at the rate of \$75.00 per month, unless modified by the Board.  If Respondent fails to pay the Board's costs on the dates determined by the
.6 17 18	Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,548.50. Respondent shall make said payments at the rate of \$75.00 per month, unless modified by the Board.  If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of
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6   17   18   19   19   20   221   222	Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,548.50. Respondent shall make said payments at the rate of \$75.00 per month, unless modified by the Board.  If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by Respondent shall not relieve him of the responsibility to reimburse the Board its costs of investigation and prosecution.  13. Respondent's probation is subject to revocation because he failed to comply with
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6   17   18   19   19   20   221   222   223   224	12. At all times after the effective date of Respondent's probation, Condition G stated:  Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,548.50. Respondent shall make said payments at the rate of \$75.00 per month, unless modified by the Board.  If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by Respondent shall not relieve him of the responsibility to reimburse the Board its costs of investigation and prosecution.  13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition G, referenced above, in that Respondent failed to make any cost recovery payments to the Board.
6   17   18   19   19   19   19   19   19   19	Respondent shall pay to the Board its costs of investigation and prosecution in the amount of \$2,548.50. Respondent shall make said payments at the rate of \$75.00 per month, unless modified by the Board.  If Respondent fails to pay the Board's costs on the dates determined by the Board, after affording him notice and the opportunity to be heard, the Board shall revoke probation and carry out the disciplinary order that was stayed. The filing of bankruptcy by Respondent shall not relieve him of the responsibility to reimburse the Board its costs of investigation and prosecution.  13. Respondent's probation is subject to revocation because he failed to comply with Probation Condition G, referenced above, in that Respondent failed to make any cost recovery payments to the Board.

## FIFTH CAUSE TO REVOKE PROBATION

# (Failure to Maintain an Active Pharmacy Technician License)

14. At all times after the effective date of Respondent's probation, Condition I stated:

At all times, while on probation, Respondent shall maintain an active current technician registration/certification with the board, including any period during which suspension or probation is tolled.

If Respondent's pharmacy technician registration/certification expires or is cancelled by operation of law or otherwise, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of this probation not previously satisfied.

15. Respondent's probation is subject to revocation because he failed to comply with Probation Condition I, referenced above, in that Respondent did not renew his pharmacy technician registration as required and allowed it to expire on February 29, 2008.

# SIXTH CAUSE TO REVOKE PROBATION

# (Failure to Notify the Board of a Change in Mailing Address)

16. At all times after the effective date of Respondent's probation, Condition J stated:

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

17. Respondent's probation is subject to revocation because he failed to comply with Probation Condition J, referenced above, in that the Board sent correspondence to Respondent via certified U.S. Mail to his address of record. The correspondence was returned to the Board marked "Attempted – Not Known, Unable to Forward," and "Undeliverable as Addressed, Unable to Forward."

#### SEVENTH CAUSE TO REVOKE PROBATION

## (Failure to Maintain 80 Hours Monthly Employment as a Pharmacy Technician)

18. At all times after the effective date of Respondent's probation, Condition K stated:

It is a violation of probation for Respondent to work less than 80 hours per month as a pharmacy technician. Regardless of residency, for any reason, should he cease practicing as a pharmacy technician in California, Respondent must notify the Board in writing within 10 days of cessation of practice or the resumption of the practice. Such periods of time shall not apply to the reduction of the probation

1 period. It is a violation of probation for Respondent's probation to remain tolled pursuant to the provisions of this condition for a period exceeding three consecutive 2 years. 3 "Cessation of practice" means any period of time exceeding 30 days in which Respondent is not engaged in the practice as a pharmacy technician as defined in 4 Business and Professions Code section 4028. Respondent's probation is subject to revocation because he failed to comply with 5 Probation Condition K, referenced above, in that Respondent was not legally employed as a 6 pharmacy technician at any time during the probation period. 7 EIGHTH CAUSE TO REVOKE PROBATION 8 (Failure to Submit Proof of Attendance in a Substance Abuse Program) 9 20. At all times after the effective date of Respondent's probation, Condition M stated: 10 11 Within 30 days of the effective date of this Decision, Respondent shall attend regularly a board-approved recognized and established substance abuse recovery 12 support group in California (e.g. Alcoholic Anonymous, Cocaine Anonymous, etc.). He must attend at least one group meeting per week. He shall continue regular 13 attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation, unless modified by the Board. 14 21. Respondent's probation is subject to revocation because he failed to comply with 15 Probation Condition M, referenced above, in that Respondent failed to submit any documentation 16 or proof of attendance in any substance abuse recovery support group. 17 NINTH CAUSE TO REVOKE PROBATION 18 (Failure to Submit to Random Drug Testing) 19 · 22. At all times after the effective date of Respondent's probation, Condition N stated: 20 21 At his own expense, Respondent shall participate in random drug testing, including but not limited to, biological fluid testing (urine, blood), breathalyzer, hair 22. follicle testing, or a drug screening program approved by the Board. The length of time shall be for the entire probation period, and the frequency of testing will be 23 determined by the Board. At all times, Respondent shall cooperate with the Board, and, when directed, shall submit to such tests and samples for the detection of 24 alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances. Failure to submit to testing as directed shall constitute a violation of probation. Any 25 confirmed positive drug test shall result in the immediate suspension of practice by Respondent. He may not resume the practice of pharmacy until notified by the Board 26 in writing. 27 111 28

1	23. Respondent's probation is subject to revocation because he failed to comply with
2	Probation Condition N, referenced above, in that Respondent failed to enroll in the Board-
3	appointed random drug testing program and, therefore, he has not submitted to any drug test.
4	PRAYER
5	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6	and that following the hearing, the Board of Pharmacy issue a decision:
7	1. Revoking the probation that was granted by the Board of Pharmacy in OAH Case No.
8	L2006070473 and imposing the disciplinary order that was stayed thereby revoking Pharmacy
9	Technician Registration No. TCH 56928 issued to Andrew Albert Asaro;
10	2. Revoking or suspending Pharmacy Technician Registration No. TCH 56928, issued
11	to Andrew Albert Asaro;
12	3. Taking such other and further action as deemed necessary and proper.
13	
14	DATED: 12/17/10 liginia held
15	Executive Officer  Board of Pharmacy
16	Board of Pharmacy Department of Consumer Affairs State of California
17	Complainant
18	SD2010702405
19	SD2010702495
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# Exhibit A

**Decision and Order** 

Board of Pharmacy Case No. 2908

Office of Administrative Hearings Case No. L2006070473