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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Petition to Revoke  
11 Probation Against

Case No. 4539

12 **DARQUIS K. FISHER**  
40 Navy Road  
13 San Francisco, CA 94124  
14 Pharmacy Technician License No. TCH  
108401

**PETITION TO REVOKE PROBATION**

15 Respondent.

16  
17 Complainant alleges:

18 PARTIES

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

22 2. On or about March 28, 2012, the Board of Pharmacy issued Pharmacy Technician  
23 License Number TCH 108401 to Darquis K. Fisher (Respondent). The Pharmacy Technician  
24 License will expire on July 31, 2013, unless renewed.

25 3. In a disciplinary action entitled "In the Matter of Statement of Issues Against Darquis  
26 K. Fisher," Case No. 4048, the Board of Pharmacy issued a decision, effective March 28, 2012, in  
27 which Respondent's Pharmacy Technician License was revoked. However, the revocation was  
28

1 stayed and Respondent's Pharmacy Technician License was placed on probation for a period of  
2 three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A  
3 and is incorporated by reference.

#### 4 JURISDICTION

5 4. This Petition to Revoke Probation is brought before the Board of Pharmacy (Board),  
6 Department of Consumer Affairs, under the authority of the following laws. All section  
7 references are to the Business and Professions Code unless otherwise indicated.

8 5. Section 4300 of the Code states:

9 "(a) Every license issued may be suspended or revoked.

10 "(b) The board shall discipline the holder of any license issued by the board, whose default  
11 has been entered or whose case has been heard by the board and found guilty, by any of the  
12 following methods:

13 "(1) Suspending judgment.

14 "(2) Placing him or her upon probation.

15 "(3) Suspending his or her right to practice for a period not exceeding one year.

16 "(4) Revoking his or her license.

17 "(5) Taking any other action in relation to disciplining him or her as the board in its  
18 discretion may deem proper.

19 "(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The  
20 board may, in its sole discretion, issue a probationary license to any applicant for a license who is  
21 guilty of unprofessional conduct and who has met all other requirements for licensure. The board  
22 may issue the license subject to any terms or conditions not contrary to public policy, including,  
23 but not limited to, the following:

24 "(1) Medical or psychiatric evaluation.

25 "(2) Continuing medical or psychiatric treatment.

26 "(3) Restriction of type or circumstances of practice.

27 "(4) Continuing participation in a board-approved rehabilitation program.

28 "(5) Abstention from the use of alcohol or drugs.

1 "(6) Random fluid testing for alcohol or drugs.

2 "(7) Compliance with laws and regulations governing the practice of pharmacy.

3 "(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary  
4 certificate of licensure for any violation of the terms and conditions of probation. Upon  
5 satisfactory completion of probation, the board shall convert the probationary certificate to a  
6 regular certificate, free of conditions.

7 "(e) The proceedings under this article shall be conducted in accordance with Chapter 5  
8 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board  
9 shall have all the powers granted therein. The action shall be final, except that the propriety of  
10 the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of  
11 Civil Procedure."

12 FIRST CAUSE TO REVOKE PROBATION

13 (Failure to Report Quarterly to the Board)

14 6. At all times after the effective date of Respondent's probation, Condition 3 stated:

15 Respondent shall report to the board quarterly, on a schedule as directed by the  
16 board or its designee. The report shall be made either in person or in writing, as  
17 directed. Among other requirements, respondent shall state in each report under  
18 penalty of perjury whether there has been compliance with all the terms and  
19 conditions of probation. Failure to submit timely reports in a form as directed shall  
20 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.

21 7. Respondent's probation is subject to revocation because he failed to comply with  
22 Probation Condition 3, referenced above. The facts and circumstances regarding this violation  
23 are as follows:

24 A. Respondent was informed by the Board upon initiating probation that he must file  
25 with the Board quarterly reports throughout the duration of his probation. Respondent was  
26 informed that such reports are due by the 10th of January, April, July, and October for each year  
27 of the probation. Respondent further was informed of certain information that must be included in  
28 such reports.

1 B. Respondent did not file a quarterly report with the Board on or before July 10, 2012.

2 SECOND CAUSE TO REVOKE PROBATION

3 (Failure to Attend and/or Report regarding Abuse Recovery Relapse Prevention and Support  
4 Groups)

5 8. At all times after the effective date of Respondent's probation, Condition 15 stated:

6 Within thirty (30) days of the effective date of this decision, respondent shall begin  
7 regular attendance at a recognized and established substance abuse recovery  
8 support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous,  
9 etc.) which has been approved by the board or its designee. Respondent must  
10 attend at least one group meeting per week unless otherwise directed by the board  
11 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.

12 9. Respondent's probation is subject to revocation because he failed to comply with  
13 Probation Condition 15, referenced above. The facts and circumstances regarding this violation  
14 are as follows:

15 A. Respondent failed to attend and/or submit documentation of having attended a  
16 substance abuse recovery support group as of the due date for the first quarterly report.

17 THIRD CAUSE TO REVOKE PROBATION

18 (Failure to Submit to Drug Screening)

19 10. At all times after the effective date of Respondent's probation, Condition 16 stated:  
20 Respondent, at his own expense, shall participate in random testing, including but  
21 not limited to biological fluid testing (urine, blood), breathalyzer, hair follicle  
22 testing, or other drug screening program as directed by the board or its designee.  
23 Respondent may be required to participate in testing for the entire probation period  
24 and the frequency of testing will be determined by the board or its designee. At all  
25 times respondent shall fully cooperate with the board or its designee, and shall,  
26 when directed, submit to such tests and samples for the detection of alcohol,  
27 narcotics, hypnotics, dangerous drugs or other controlled substances as the board  
28 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

1 shall result in the automatic suspension of work by respondent. Respondent may  
2 not resume work as a pharmacy technician until notified by the board in writing. . .

3 11. Respondent's probation is subject to revocation because he failed to comply with  
4 Probation Condition 16, referenced above. The facts and circumstances regarding this violation  
5 are as follows:

6 A. Respondent failed to participate in the Board's random drug screening program.

7 Respondent failed to call in for instructions regarding possible testing on the following dates:

- 8 1. March 29 through April 3, 2012;
- 9 2. April 12, 2012;
- 10 3. April 14, 2012;
- 11 4. April 28, 2012;
- 12 5. May 1, 2012;
- 13 6. May 7, 2012;
- 14 7. May 13, 2012;
- 15 8. May 16, 2012; and
- 16 9. May 21, 2012, through at least August 5, 2012.

17 B. Furthermore, Respondent failed to submit to scheduled drug tests on the following  
18 dates:

- 19 1. April 12, 2012;
- 20 2. April 19, 2012;
- 21 3. April 24, 2012;
- 22 4. May 4, 2012;
- 23 5. May 8-9, 2012;
- 24 6. May 17, 2012;
- 25 7. June 8, 2012;
- 26 8. June 18-19, 2012;
- 27 9. June 8, 2012;

1 10. June 18-19, 2012;

2 11. June 28, 2012;

3 12. July 6, 2012;

4 13. July 12, 2012;

5 14. July 20, 2012; and

6 15. July 24, 2012.

7 FOURTH CAUSE TO REVOKE PROBATION

8 (Failure to Abstain from Drugs and Alcohol)

9 12. At all times after the effective date of Respondent's probation, Condition 19 stated:  
10 Respondent shall completely abstain from the possession or use of alcohol,  
11 controlled substances, dangerous drugs and their associated paraphernalia except  
12 when the drugs are lawfully prescribed by a licensed practitioner as part of a  
13 documented medical treatment. Upon request of the board or its designee,  
14 respondent shall provide documentation from the licensed practitioner that the  
15 prescription for the drug was legitimately issued and is a necessary part of the  
16 treatment of the respondent. Failure to timely provide such documentation shall be  
17 considered a violation of probation. Respondent shall ensure that he is not in the  
18 same physical location as individuals who are using illicit substances even if  
19 respondent is not personally ingesting the drugs. Any possession or use of alcohol,  
20 controlled substances, or their associated paraphernalia not supported by the  
21 documentation timely provided, and/or any physical proximity to persons using  
22 illicit substances, shall be considered a violation of probation.

23 13. Respondent's probation is subject to revocation because he failed to comply with  
24 Probation Condition 19, referenced above. The facts and circumstances regarding this violation  
25 are as follows:

26 A. Respondent tested positive for ETG/ETS (alcohol) on April 18, 2012. Respondent  
27 was instructed to provide an explanation to the Board for the positive result, but did not respond.

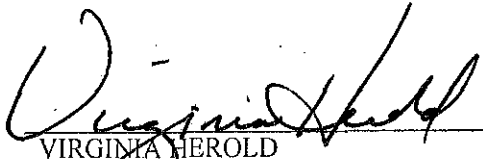
28 PRAYER

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

1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4048  
and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician  
License No. TCH 108401 issued to Darquis K. Fisher;

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2. Revoking or suspending Pharmacy Technician License No. TCH 108401, issued to Darquis K. Fisher;
3. Taking such other and further action as is deemed necessary and proper.

DATED: 3/19/13 

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

SF2013403845  
.rtf

**Exhibit A**

**Decision and Order**

**Board of Pharmacy Case No. 4048**



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

In the Matter of the Statement of Issues Against:

Case No. 4048

**Darquis K. Fisher  
40 Navy Road  
San Francisco, CA 94124**

Respondent.

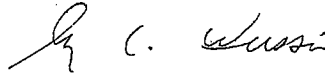
**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on March 28, 2012.

It is so ORDERED on February 27, 2012.

BOARD OF PHARMACY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA



By

\_\_\_\_\_  
STANLEY C. WEISSER  
Board President

1 KAMALA D. HARRIS  
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2 FRANK H. PACOE  
Supervising Deputy Attorney General  
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7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 4048

12 **DARQUIS K. FISHER**

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

13 Respondent.

14  
15 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
entitled proceedings that the following matters are true:

16 PARTIES

17 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.  
18 She brought this action solely in her official capacity and is represented in this matter by Kamala  
19 D. Harris, Attorney General of the State of California, by Brett A. Kingsbury, Deputy Attorney  
20 General.

21 2. Respondent Darquis K. Fisher (Respondent) is representing himself in this  
22 proceeding and has chosen not to exercise his right to be represented by counsel.

23 3. On or about October 1, 2010, Respondent filed an application dated September 10,  
24 2010, with the Board of Pharmacy to obtain a Pharmacy Technician Registration.

25 JURISDICTION

26 4. Statement of Issues No. 4048 was filed before the Board of Pharmacy (Board),  
27 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of  
28

1 Issues and all other statutorily required documents were properly served on Respondent on  
2 September 19, 2011. A copy of Statement of Issues No. 4048 is attached as exhibit A and  
3 incorporated herein by reference.

4 ADVISEMENT AND WAIVERS

5 5. Respondent has carefully read and understands the charges and allegations in  
6 Statement of Issues No. 4048. Respondent has also carefully read and understands the effects of  
7 this Stipulated Settlement and Disciplinary Order.

8 6. Respondent is fully aware of his legal rights in this matter, including the right to a  
9 hearing on the charges and allegations in the Statement of Issues; the right to be represented by  
10 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
11 the right to present evidence and to testify on his own behalf; the right to the issuance of  
12 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
13 reconsideration and court review of an adverse decision; and all other rights accorded by the  
14 California Administrative Procedure Act and other applicable laws.

15 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
16 every right set forth above.

17 CULPABILITY

18 8. Respondent admits the truth of each and every charge and allegation in Statement of  
19 Issues No. 4048.

20 9. Respondent agrees that his Pharmacy Technician Registration is subject to denial and  
21 he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order  
22 below.

23 CONTINGENCY

24 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent  
25 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may  
26 communicate directly with the Board regarding this stipulation and settlement, without notice to  
27 or participation by Respondent. By signing the stipulation, Respondent understands and agrees  
28 that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the

1 Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and  
2 Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for  
3 this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall  
4 not be disqualified from further action by having considered this matter.

5 11. The parties understand and agree that facsimile copies of this Stipulated Settlement  
6 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
7 effect as the originals.

8 12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an  
9 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
10 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,  
11 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
12 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
13 writing executed by an authorized representative of each of the parties.

14 13. In consideration of the foregoing admissions and stipulations, the parties agree that  
15 the Board may, without further notice or formal proceeding, issue and enter the following  
16 Disciplinary Order:

17 **DISCIPLINARY ORDER**

18 IT IS HEREBY ORDERED THAT upon satisfaction of all statutory and regulatory  
19 requirements for issuance of a license, a license shall be issued to respondent and immediately  
20 revoked; the order of revocation will be stayed and respondent will be placed on probation for  
21 three (3) years upon the following terms and conditions:

22 1. **Certification Prior to Resuming Work**

23 Respondent shall be automatically suspended from working as a pharmacy technician until  
24 he is certified as defined by Business and Professions Code section 4202(a)(4) and provides  
25 satisfactory proof of certification to the board. Respondent shall not resume working as a  
26 pharmacy technician until notified by the board. Failure to achieve certification within one (1)  
27 year shall be considered a violation of probation. Respondent shall not resume working as a  
28 pharmacy technician until notified by the board.

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

9 Subject to the above restrictions, respondent may continue to own or hold an interest in any  
10 licensed premises by the board in which he holds an interest at the time this decision becomes  
11 effective unless otherwise specified in this order.

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

13 **2. Obey All Laws**

14 Respondent shall obey all state and federal laws and regulations.

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

- 17  an arrest or issuance of a criminal complaint for violation of any provision of the  
18 Pharmacy Law, state and federal food and drug laws, or state and federal controlled  
19 substances laws
- 20  a plea of guilty or nolo contendere in any state or federal criminal proceeding to any  
21 criminal complaint, information or indictment
- 22  a conviction of any crime
- 23  discipline, citation, or other administrative action filed by any state or federal agency  
24 which involves respondent's pharmacy technician license or which is related to the  
25 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,  
26 or charging for any drug, device or controlled substance.

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

28 **3. Report to the Board**

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

9 **4. Interview with the Board**

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

15 **5. Cooperate with Board Staff**

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

19 **6. Notice to Employers**

20 During the period of probation, respondent shall notify all present and prospective  
21 employers of the decision in case number 4048 and the terms, conditions and restrictions imposed  
22 on respondent by the decision, as follows:

23 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of  
24 respondent undertaking any new employment, respondent shall cause his direct supervisor,  
25 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's  
26 tenure of employment) and owner to report to the board in writing acknowledging that the listed  
27 individual(s) has/have read the decision in case number 4048 and the terms and conditions  
28 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or

1 supervisor(s) submit timely acknowledgement(s) to the board.

2 If respondent works for or is employed by or through a pharmacy employment service,  
3 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy  
4 of the terms and conditions of the decision in case number 4048 in advance of the respondent  
5 commencing work at each pharmacy. A record of this notification must be provided to the board  
6 upon request.

7 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen  
8 (15) days of respondent undertaking any new employment by or through a pharmacy employment  
9 service, respondent shall cause his direct supervisor with the pharmacy employment service to  
10 report to the board in writing acknowledging that he has read the decision in case number 4048  
11 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure  
12 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

#### 21 **7. Probation Monitoring Costs**

22 Respondent shall pay any costs associated with probation monitoring as determined by the  
23 board each and every year of probation. Such costs shall be payable to the board on a schedule as  
24 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall  
25 be considered a violation of probation.

#### 26 **8. Status of License**

27 Respondent shall, at all times while on probation, maintain an active, current pharmacy  
28 technician license with the board, including any period during which suspension or probation is

1 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

6 **9. License Surrender While on Probation/Suspension**

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

15 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician  
16 license to the board within ten (10) days of notification by the board that the surrender is  
17 accepted. Respondent may not reapply for any license, permit, or registration from the board for  
18 three (3) years from the effective date of the surrender. Respondent shall meet all requirements  
19 applicable to the license sought as of the date the application for that license is submitted to the  
20 board.

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

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

28 Failure to timely notify the board of any change in employer(s), name(s), address(es), or



1 phone number(s) shall be considered a violation of probation.

2 **11. Tolling of Probation**

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

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

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

17 "Cessation of work" means calendar month during which respondent is not  
18 working for at least 20 hours as a pharmacy technician, as defined in Business and  
19 Professions Code section 4115. "Resumption of work" means any calendar month  
20 during which respondent is working as a pharmacy technician for at least 20 hours as  
21 a pharmacy technician as defined by Business and Professions Code section 4115.

22 **12. Violation of Probation**

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

28 If respondent violates probation in any respect, the board, after giving respondent notice

1 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that  
2 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a  
3 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If  
4 a petition to revoke probation or an accusation is filed against respondent during probation, the  
5 board shall have continuing jurisdiction, and the period of probation shall be automatically  
6 extended until the petition to revoke probation or accusation is heard and decided.

7 **13. Completion of Probation**

8 Upon written notice by the board indicating successful completion of probation,  
9 respondent's pharmacy technician license will be fully restored.

10 **14. No Ownership of Licensed Premises**

11 Respondent shall not own, have any legal or beneficial interest in, or serve as a manager,  
12 administrator, member, officer, director, trustee, associate, or partner of any business, firm,  
13 partnership, or corporation currently or hereinafter licensed by the board. Respondent shall sell  
14 or transfer any legal or beneficial interest in any entity licensed by the board within ninety (90)  
15 days following the effective date of this decision and shall immediately thereafter provide written  
16 proof thereof to the board. Failure to timely divest any legal or beneficial interest(s) or provide  
17 documentation thereof shall be considered a violation of probation.

18 **15. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

27 **16. Random Drug Screening**

28 Respondent, at his own expense, shall participate in random testing, including but not

1 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug  
2 screening program as directed by the board or its designee. Respondent may be required to  
3 participate in testing for the entire probation period and the frequency of testing will be  
4 determined by the board or its designee. At all times respondent shall fully cooperate with the  
5 board or its designee, and shall, when directed, submit to such tests and samples for the detection  
6 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its  
7 designee may direct. Failure to timely submit to testing as directed shall be considered a violation  
8 of probation. Upon request of the board or its designee, respondent shall provide documentation  
9 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is  
10 a necessary part of the treatment of the respondent. Failure to timely provide such documentation  
11 shall be considered a violation of probation. Any confirmed positive test for alcohol or for any  
12 drug not lawfully prescribed by a licensed practitioner as part of a documented medical treatment  
13 shall be considered a violation of probation and shall result in the automatic suspension of work  
14 by respondent. Respondent may not resume work as a pharmacy technician until notified by the  
15 board in writing.

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

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

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

1           **17. Work Site Monitor**

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

12           **18. Notification of Departure**

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

17           **19. Abstain from Drugs and Alcohol Use**

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

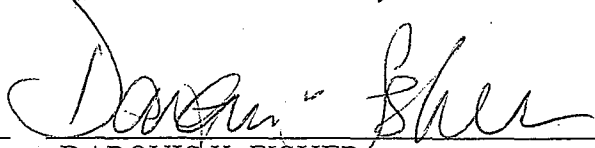
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ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Pharmacy.

DATED:

12/13/11



DARQUIS K. FISHER  
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

Dated:

1/30/12

Respectfully submitted,

KAMALA D. HARRIS  
Attorney General of California  
FRANK H. PACOE  
Supervising Deputy Attorney General



BRETT A. KINGSBURY  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Statement of Issues No. 4048**

1 KAMALA D. HARRIS  
Attorney General of California  
2 FRANK H. PACOE  
Supervising Deputy Attorney General  
3 BRETT A. KINGSBURY  
Deputy Attorney General  
4 State Bar No. 243744  
455 Golden Gate Avenue, Suite 11000  
5 San Francisco, CA 94102-7004  
Telephone: (415) 703-1192  
6 Facsimile: (415) 703-5480  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**BOARD OF PHARMACY**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues  
11 Against:

Case No. 4048

12 **DARQUIS K. FISHER**  
13 **40 Navy Rd.**  
**San Francisco, CA 94124**

**STATEMENT OF ISSUES**

14 Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

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

20 2. On or about October 1, 2010, the Board of Pharmacy (Board), Department of  
21 Consumer Affairs received an application for a Pharmacy Technician Registration from Darquis  
22 K. Fisher (Respondent). On or about September 10, 2010, Darquis K. Fisher certified under  
23 penalty of perjury to the truthfulness of all statements, answers, and representations in the  
24 application. The Board denied the application on February 17, 2011.

25 **JURISDICTION**

26 3. This Statement of Issues is brought before the Board under the authority of the  
27 following laws. All section references are to the Business and Professions Code unless otherwise  
28 indicated.

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4. Section 4300 of the Code states:

"....

"(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

"(1) Medical or psychiatric evaluation.

"(2) Continuing medical or psychiatric treatment.

"(3) Restriction of type or circumstances of practice.

"(4) Continuing participation in a board-approved rehabilitation program.

"(5) Abstention from the use of alcohol or drugs.

"(6) Random fluid testing for alcohol or drugs.

"(7) Compliance with laws and regulations governing the practice of pharmacy.

"....

"(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure."

**JURISDICTION**

5. Section 480 of the Business and Professions Code provides, in pertinent part, that a board may deny a license if the applicant has been convicted of a crime substantially related to the qualifications, functions or duties of the business or profession for which application is made, has committed any act involving dishonesty, fraud or deceit, has committed any act which if done by a licentiate would be grounds for suspension or revocation of a license, or has knowingly made a false statement of fact required to be revealed in the application.

6. Section 4301 of the Code states:



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

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

4 ". . . .

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

10 ". . . .

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

14 "(l) The conviction of a crime substantially related to the qualifications, functions, and  
15 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13  
16 (commencing with Section 801) of Title 21 of the United States Code regulating controlled  
17 substances or of a violation of the statutes of this state regulating controlled substances or  
18 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the  
19 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.  
20 The board may inquire into the circumstances surrounding the commission of the crime, in order  
21 to fix the degree of discipline or, in the case of a conviction not involving controlled substances  
22 or dangerous drugs, to determine if the conviction is of an offense substantially related to the  
23 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or  
24 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning  
25 of this provision. The board may take action when the time for appeal has elapsed, or the  
26 judgment of conviction has been affirmed on appeal or when an order granting probation is made  
27 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of  
28 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not

1 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or  
2 indictment.

3 . . . ."

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

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

11 **FIRST CAUSE FOR DENIAL OF APPLICATION**

12 (Criminal Convictions)

13 8. Respondent's application is subject to denial pursuant to Code sections 480, 4300(c),  
14 and 4301(k) & (l), as refined by title 17, section 1770, California Code of Regulations, in that  
15 Respondent received a criminal conviction. Specifically, on or around December 10, 2008, in the  
16 Superior Court of California, County of Alameda, Respondent pled no contest to and was  
17 convicted of violating California Vehicle Code 23153(b) (Driving with .08% Blood Alcohol  
18 Causing Injury), a felony. The circumstances were that Respondent drove while intoxicated and  
19 collided with another vehicle.

20 **SECOND CAUSE FOR DENIAL OF APPLICATION**

21 (Dangerous Use of Alcohol)

22 9. Respondent's application is subject to denial pursuant to Code sections 4300(c) and  
23 4301(h) in that Respondent administered to himself alcoholic beverages to the extent or in a  
24 manner dangerous or injurious to himself, to any other person, or to the public, or to the extent  
25 that the use impaired his ability to conduct with safety to the public the practice authorized by the  
26 license. The circumstances are described above in the First Cause for Denial of Application.

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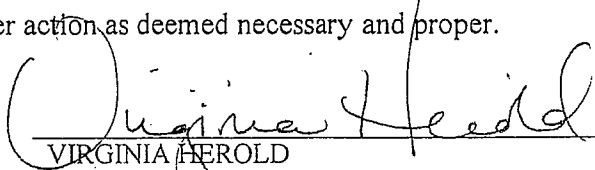
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PRAYER

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

1. Denying the application of Darquis K. Fisher for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/16/11



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

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