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8. **BEFORE THE**
9. **BOARD OF PHARMACY**
10. **DEPARTMENT OF CONSUMER AFFAIRS**
11. **STATE OF CALIFORNIA**

11. In the Matter of the Petition to Revoke Probation
12. Against:

Case No. 4540

13. **ROBERT MICHAEL MAGDALENO**
14. **3349 Euclid Ave.**
15. **Stockton, California 95204**

PETITION TO REVOKE PROBATION

16. **Pharmacy Technician License No. TCH 110546**

Respondent.

17. Complainant alleges:

18. PARTIES

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

21. 2. On or about May 18, 2012, the Board of Pharmacy issued Original Pharmacy
22. Technician License Number TCH 110546 to Robert Magdaleno (Respondent). The license was
23. in effect at all times relevant to the charges brought herein and will expire on December 31, 2013
24. unless renewed.

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1 3. In a disciplinary action entitled "In the Matter of the Statement of Issues Against
2 Robert Michael Magdaleno," Case No. 4178, the Board of Pharmacy issued a Stipulated
3 Settlement and Disciplinary Order, effective May 18, 2012, whereby Respondent was to be issued
4 a probationary license upon satisfaction of meeting all statutory and regulatory requirements.
5 Following the satisfaction of this condition, Respondent was issued Pharmacy Technician License
6 No. TCH 110546, and the license was immediately revoked. Revocation was stayed, and the
7 license was placed on probation for a period of three (3) years with certain terms and conditions.
8 A copy of that decision is attached as Exhibit A and is incorporated by reference.

9 JURISDICTION

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

13 5. Section 4011 of the Code provides that the Board shall administer and enforce both
14 the Pharmacy Law [Bus. & Prof. Code, § 4178 et seq.] and the Uniform Controlled Substances
15 Act [Health & Safety Code, § 11000 et seq.].

16 6. Section 4300(a) of the Code provides that every license issued by the Board may be
17 suspended or revoked.

18 FACTUAL BACKGROUND

19 7. On or about July 12, 2011, the Board denied Robert Magdaleno's Application for
20 Registration as a Pharmacy Technician due to criminal convictions by the San Joaquin County
21 Superior Court (Case No. 07769SR and Case No. SP05-66542) for driving under the influence of
22 alcohol with a blood alcohol level of .15% and .16%.

23 8. Effective May 18, 2012, pursuant to a Stipulated Settlement and Disciplinary Order adopted
24 by the Board in Statement of Issues No. 4178, Respondent was to be issued a probationary license
25 upon satisfaction of meeting all statutory and regulatory requirements. Following the satisfaction
26 of this condition, Respondent was issued Pharmacy Technician License No. TCH 110546, and the
27 license was immediately revoked. Revocation was stayed, and the license was placed on
28 probation for a period of three (3) years, subject to terms and conditions, including the

1 requirements that Respondent shall attend a Board-approved substance abuse recovery relapse
2 prevention and support group, shall participate in random drug screening and shall abstain from
3 drugs and alcohol use.

4 FIRST CAUSE TO REVOKE PROBATION

5 **(Failure to Submit Proof of Attendance of Substance Abuse Support Group)**

6 9. At all times after the effective date of the Decision and Order imposing probation on
7 Respondent's license, Term and Condition 15 of that Order required:

8 **15. Attend Substance Abuse Recovery Relapse Prevention and Support**
9 **Groups.** This term of probation shall apply if Respondent receives a confirmed
10 positive during the random drug screening provided by Condition No. 17 hereof. In
11 that event, and immediately upon receipt of notice from the Board or its designee,
12 Respondent shall begin regular attendance at a recognized and established substance
13 abuse recovery support group in California (e.g. Alcoholics Anonymous, Narcotics
14 Anonymous, etc.) which has been approved by the board or its designee.
15 Respondent must attend at least one group meeting per week unless otherwise
16 directed by the Board or its designee. Respondent shall continue regular attendance
17 and submit signed and dated documentation confirming attendance with each
18 quarterly report for the duration of probation. Failure to attend or submit
19 documentation thereof shall be considered a violation of probation.

20 10. Respondent's probation is subject to revocation as he failed to comply with Term and
21 Condition 15 of his probation, listed above. Respondent tested positive for ETG/ETS (Alcohol)
22 in random drug screenings on July 16, 2012 and July 24, 2012. Respondent has failed to submit
23 proof of attendance at a Board-approved recognized and established substance abuse recovery
24 support group in California.

25 SECOND CAUSE TO REVOKE PROBATION

26 **(Failure to Report and Submit to Random Drug Screening)**

27 11. At all times after the effective date of the Decision and Order imposing probation on
28 Respondent's license, Term and Condition 16 of that Order required in pertinent part:

16. **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

1 board or its designee may direct. Failure to timely submit to testing as directed shall
2 be considered a violation of probation.

3 ...

4 Any confirmed positive test for alcohol or for any drug not lawfully prescribed by a
5 licensed practitioner as part of a documented medical treatment shall be considered a
6 violation of probation and shall result in automatic suspension of work by Respondent.
7 Respondent may not resume work as a pharmacy technician until notified by the board
8 in writing.

9 12. Respondent's probation is subject to revocation because he failed to comply with the
10 Term and Condition 16 of his probation, listed above. Respondent failed to report daily on May
11 29-June 3, 2012, July 1, 2012, July 27, 2012, or on any subsequent date. Respondent failed to
12 submit to random drug screening with the contracted lab services vendor as scheduled on August
13 3, 2012, or on any subsequent date..

14 THIRD CAUSE TO REVOKE PROBATION

15 **(Failure to Abstain from Drugs and Alcohol Use)**

16 13. At all times after the effective date of the Decision and Order imposing probation
17 on Respondent's license, the Term and Condition 17 of that Order required in pertinent part:

18 **17. Abstain from Drugs and Alcohol.** Respondent shall completely abstain from
19 the possession or use of alcohol, controlled substances, dangerous drugs and their
20 associated paraphernalia except when the drugs are lawfully prescribed by a
21 licensed practitioner as part of a documented medical treatment.

22 ...

23 Any possession or use of alcohol, controlled substances, or their associated
24 paraphernalia not supported by the documentation timely provided, and/or any
25 physical proximity to persons using illicit substances, shall be considered a violation
26 of probation.

27 14. Respondent's probation is subject to revocation as he failed to comply with Term
28 and Condition 17 of his probation, listed above. Respondent tested positive for ETG/ETS on
July 16, 2012 and July 24, 2012 through the Board's random drug screening program.

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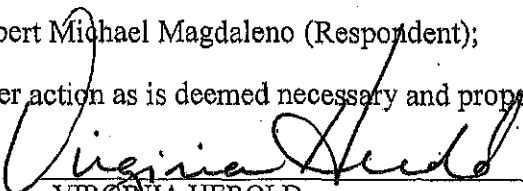
PRAYER

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. Revoking the probation that was granted by the Board of Pharmacy in Case No. 4178 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 110546, issued to Robert Michael Magdaleno (Respondent);

2. Taking such other and further action as is deemed necessary and proper.

DATED: 6/5/13



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

Exhibit A

Decision and Order

Board of Pharmacy Case No. 4178

1 KAMALA D. HARRIS
Attorney General of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 STERLING A. SMITH
Deputy Attorney General
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7 *Attorneys for Board of Pharmacy*

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

11 In the Matter of the Statement of Issues
Against:

Case No. 4178

12
13 ROBERT MICHAEL MAGDELANO
20 East Willow Street
Stockton, CA 95202
14 Pharmacy Technician License

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

15 Respondent.

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

19 PARTIES

20
21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
22 She brought this action solely in her official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Sterling A. Smith, Deputy Attorney
24 General.

25 2. Respondent Robert Michael Magdelano (Respondent) is representing himself in this
26 proceeding and has chosen not to exercise his right to be represented by counsel.
27
28

1 1. Certification Prior to Resuming Work

2 Respondent shall be automatically suspended from working as a pharmacy technician until
3 he is certified as defined by Business and Professions Code section 4202(a)(4) and provides
4 satisfactory proof of certification to the Board. Respondent shall not resume working as a
5 pharmacy technician until notified by the Board. Failure to achieve certification within one (1)
6 year shall be considered a violation of probation. Respondent shall not resume working as a
7 pharmacy technician until notified by the Board.

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

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

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

20 2. Obey All Laws

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

22 Respondent shall report any of the following occurrences to the Board, in writing, within
23 seventy-two (72) hours of such occurrence:

- 24 an arrest or issuance of a criminal complaint for violation of any provision of the
25 Pharmacy Law, state and federal food and drug laws, or state and federal controlled
26 substances laws
27 a plea of guilty or nolo contendere in any state or federal criminal proceeding to any
28 criminal complaint, information or indictment

- 1 a conviction of any crime
2 discipline, citation, or other administrative action filed by any state or federal agency
3 which involves Respondent's pharmacy technician license or which is related to the
4 practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing,
5 or charging for any drug, device or controlled substance.

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

7 3. Report to the Board

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

16 4. Interview with the Board

17 Upon receipt of reasonable prior notice, Respondent shall appear in person for interviews
18 with the Board or its designee, at such intervals and locations as are determined by the Board or
19 its designee. Failure to appear for any scheduled interview without prior notification to Board
20 staff, or failure to appear at two (2) or more scheduled interviews with the Board or its designee
21 during the period of probation, shall be considered a violation of probation.

22 5. Cooperate with Board Staff

23 Respondent shall cooperate with the Board's inspection program and with the Board's
24 monitoring and investigation of respondent's compliance with the terms and conditions of his
25 probation. Failure to cooperate shall be considered a violation of probation.

26 6. Notice to Employers

27 During the period of probation, Respondent shall notify all present and prospective
28 employers of the decision in Case No. 4178 and the terms, conditions and restrictions imposed on

1 Respondent by the decision, as follows:

2 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
3 respondent undertaking any new employment, Respondent shall cause his direct supervisor,
4 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
5 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
6 individual(s) has/have read the decision in Case No. 4178 and the terms and conditions imposed
7 thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
8 supervisor(s) submit timely acknowledgement(s) to the Board.

9 If Respondent works for or is employed by or through a pharmacy employment service,
10 Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
11 of the terms and conditions of the decision in Case No. 4178 in advance of the Respondent:
12 commencing work at each pharmacy. A record of this notification must be provided to the Board
13 upon request.

14 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
15 (15) days of Respondent undertaking any new employment by or through a pharmacy
16 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
17 service to report to the Board in writing acknowledging that he has read the decision in Case No.
18 4178 and the terms and conditions imposed thereby. It shall be Respondent's responsibility to
19 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

20 Failure to timely notify present or prospective employer(s) or to cause that/those
21 employer(s) to submit timely acknowledgements to the Board shall be considered a violation of
22 probation.

23 "Employment" within the meaning of this provision shall include any full-time,
24 part-time, temporary or relief service or pharmacy management service as a pharmacy
25 technician or in any position for which a pharmacy technician license is a requirement
26 or criterion for employment, whether the Respondent is considered an employee,
27 independent contractor or volunteer.

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7. 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.

8. 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.

9. 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 ten (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 (3) 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.

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

Respondent shall notify the Board in writing within ten (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 ten (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.

11. 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 minimum of forty (40) hours per calendar month. 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 for a minimum of forty (40) hours per calendar month in California, Respondent must notify the Board in writing within ten (10) days of cessation of work and must further notify the Board in writing within ten (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 thirty-six (36) months.

"Cessation of work" means calendar month during which respondent is not working for at least forty (40) hours as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which Respondent is working as a pharmacy technician for at least

1 forth (40) hours as a pharmacy technician as defined by Business and Professions
2 Code section 4115.

3 **12. Violation of Probation**

4 If Respondent has not complied with any term or condition of probation, the Board shall
5 have continuing jurisdiction over Respondent, and probation shall automatically be extended,
6 until all terms and conditions have been satisfied or the Board has taken other action as deemed
7 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
8 to impose the penalty that was stayed.

9 If Respondent violates probation in any respect, the Board, after giving Respondent notice
10 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
11 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
12 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
13 a petition to revoke probation or an accusation is filed against Respondent during probation, the
14 Board shall have continuing jurisdiction, and the period of probation shall be automatically
15 extended until the petition to revoke probation or accusation is heard and decided.

16 **13. Completion of Probation**

17 Upon written notice by the Board indicating successful completion of probation,
18 respondent's pharmacy technician license will be fully restored.

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

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

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

28 This term of probation shall apply if Respondent receives a confirmed positive during the

1 random drug screening provided by Condition No. 17 hereof. In that event, and immediately upon
2 receipt of notice from the Board or its designee, Respondent shall begin regular attendance at a
3 recognized and established substance abuse recovery support group in California, (e.g.,
4 Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its
5 designee. Respondent must attend at least one group meeting per week unless otherwise directed
6 by the board or its designee. Respondent shall continue regular attendance and submit signed and
7 dated documentation confirming attendance with each quarterly report for the duration of
8 probation. Failure to attend or submit documentation thereof shall be considered a violation of
9 probation.

10 16. Random Drug Screening

11 Respondent, at his own expense, shall participate in random testing, including but not
12 limited to biological fluid testing (urine, blood), breathalyzer, hair follicle testing, or other drug
13 screening program as directed by the Board or its designee. Respondent may be required to
14 participate in testing for the entire probation period and the frequency of testing will be
15 determined by the Board or its designee. At all times Respondent shall fully cooperate with the
16 Board or its designee, and shall, when directed, submit to such tests and samples for the detection
17 of alcohol, narcotics, hypnotics, dangerous drugs or other controlled substances as the board or its
18 designee may direct. Failure to timely submit to testing as directed shall be considered a violation
19 of probation. Upon request of the Board or its designee, Respondent shall provide documentation
20 from a licensed practitioner that the prescription for a detected drug was legitimately issued and is
21 a necessary part of the treatment of the Respondent. Failure to timely provide such
22 documentation shall be considered a violation of probation. Any confirmed positive test for
23 alcohol or for any drug not lawfully prescribed by a licensed practitioner as part of a documented
24 medical treatment shall be considered a violation of probation and shall result in the automatic
25 suspension of work by Respondent. Respondent may not resume work as a pharmacy technician
26 until notified by the Board in writing.

27 During suspension, Respondent shall not enter any pharmacy area or any portion of or any
28 other board licensed premises (wholesaler, veterinary food-animal drug retailer or any other

1 distributor of drugs) any drug manufacturer, or any other location where dangerous drugs and
2 devices or controlled substances are maintained. Respondent shall not do any act involving drug
3 selection, selection of stock, manufacturing, compounding or dispensing; nor shall respondent
4 manage, administer, or assist any licensee of the Board. Respondent shall not have access to or
5 control the ordering, manufacturing or dispensing of dangerous drugs and devices or controlled
6 substances. Respondent shall not resume work until notified by the Board.

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

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

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

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

24 **18. Criminal Probation/Parole Reports**

25 Respondent shall provide a copy of the conditions of any criminal probation/parole to the
26 Board, in writing, within ten (10) days of the issuance or the modification of those conditions.
27 Respondent shall provide the name of his probation/parole officer to the Board, in writing, within
28 ten (10) days after that officer is designated or a replacement for that officer is designated.

1 Respondent shall provide a copy of all criminal probation/parole reports to the Board within ten
2 (10) days after Respondent receives a copy of such a report.

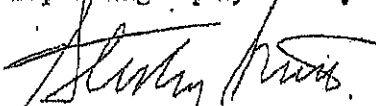
3 ACCEPTANCE

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

8
9 DATED: 3-2-12 
10 ROBERT MICHAEL MAGDELANO
11 Respondent

12 ENDORSEMENT

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

15 Dated: 3-5-2012
16 Respectfully submitted,
17 KAMALA D. HARRIS
18 Attorney General of California
19 ARTHUR D. TAGGART
20 Supervising Deputy Attorney General
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22 STERLING A. SMITH
23 Deputy Attorney General
24 Attorneys for Complainant
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