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Attorneys for Complainant

6
7 **BEFORE THE**
BOARD OF PHARMACY
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Petition to Revoke Probation Against:

Case No. 4959

11 **REYNERIO FERNANDEZ-OROZCO**
12 **1436 167th Avenue**
San Leandro, CA 94578

PETITION TO REVOKE
PROBATION

13 **Pharmacy Technician License No. TCH 97367**

14 Respondent.

15 Complainant alleges:

16 PARTIES

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

19 2. On or about June 19, 2013, the Board of Pharmacy issued Pharmacy Technician
20 License No. TCH 97367 to Reynerio Fernandez-Orozco (Respondent). The License was in full
21 force and effect at all times relevant herein and will expire on August 31, 2014, unless renewed.

22 3. In a disciplinary action titled "In the Matter of Statement of Issues Against Reynerio
23 Fernandez-Orozco," Case No. 3946, the Board of Pharmacy issued a Decision and Order, made
24 effective May 8, 2013, which ordered Respondent's application for a pharmacy technician license
25 denied, but which ordered that, upon satisfaction of all requirements for licensure, a pharmacy
26 technician license would issue to Respondent and be immediately revoked, with revocation stayed
27 in favor of a period of probation of five (5) years, on specified terms and conditions of probation.
28 A copy of that Decision and Order is attached as exhibit A and incorporated herein by reference.

1 JURISDICTION AND STATUTORY PROVISIONS

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

5 5. Section 4011 of the Code provides that the Board shall administer and enforce both
6 the Pharmacy Law [Bus. & Prof. Code, § 4000 et seq.] and the Uniform Controlled Substances
7 Act [Health & Safety Code, § 11000 et seq.].

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

10 7. Section 4300.1 of the Code provides that the expiration, cancellation, forfeiture, or
11 suspension of a Board-issued license, the placement of a license on a retired status, or the
12 voluntary surrender of a license by a licensee, shall not deprive the Board of jurisdiction to
13 commence or proceed with any investigation of, or action or disciplinary proceeding against, the
14 licensee or to render a decision suspending or revoking the license.
15

16 FIRST CAUSE TO REVOKE PROBATION

17 (Failure to Attend and/or Document Attendance at Recovery Group(s))

18 8. At all times after the effective date (May 8, 2013) of the Decision and Order imposing
19 probation on Respondent's License, Term and Condition 12 of that Order required that, within
20 thirty (30) days, Respondent begin regular attendance at a recognized and established substance
21 abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous)
22 approved by the Board or its designee, attending at least one group meeting per week unless
23 otherwise directed by the Board or its designee, and that Respondent submit signed and dated
24 documentation confirming attendance with each quarterly report for the duration of probation.
25 Respondent failed to timely begin or continue attendance at a recognized and established
26 substance abuse recovery support group, and/or failed to submit adequate documentation of such
27 attendance to the Board. This failure to attend and/or to submit satisfactory proof of attendance
28 subjects Respondent's License to revocation.\

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SECOND CAUSE TO REVOKE PROBATION

(Failure to Abstain from Drug and Alcohol Use)

9. At all times after the effective date (May 8, 2013) of the Decision and Order imposing probation on Respondent’s License, Term and Condition 13 of that Order required Respondent to completely abstain from the possession or use of alcohol, controlled substances, dangerous drugs and their associated paraphernalia, except when lawfully prescribed, and to not be in the same physical location as individuals using illicit substances. On or about August 6, 2013, a biological fluid sample submitted by Respondent tested positive for ETG/ETS (alcohol), and Respondent subsequently admitted to consuming alcohol. This failure to abstain from possession or use of alcohol, as required, subjects Respondent’s License to revocation.

THIRD CAUSE TO REVOKE PROBATION

(Failure to Cooperate with Drug Testing)

10. At all times after the effective date (May 8, 2013) of the Decision and Order imposing probation on Respondent’s License, Term and Condition 14 of that Order required Respondent to participate in random testing, including but not limited to biological fluid testing, breathalyzer, hair follicle testing, or other drug screening program as directed by the Board or its designee, at Respondent’s expense, for the entire probation period with the frequency of testing determined by the Board or its designee, required Respondent to fully cooperate with the Board or its designee and submit to testing as directed, and stated that any confirmed positive test for alcohol or any drug not lawfully prescribed as part of a documented medical treatment would be considered a violation of probation. Respondent failed to fully participate in and/or cooperate with the drug testing protocols established by the Board or its designee in that Respondent failed to do daily check-ins to determine if he was required to test on July 4, 6, 7, 13, 14, 20, 21, and/or 27, and/or on August 4 and/or 11, 2013, and/or Respondent failed to test (submit biological fluid samples) on July 11, 15 and 23, and August 7, 2013. This failure to fully participate in and/or cooperate with drug testing subjects Respondent’s License to revocation.

1 FOURTH CAUSE TO REVOKE PROBATION

2 (Confirmed Positive Test for Alcohol)

3 11. At all times after the effective date (May 8, 2013) of the Decision and Order imposing
4 probation on Respondent's License, Term and Condition 14 of that Order required Respondent to
5 participate in random testing, including but not limited to biological fluid testing, breathalyzer,
6 hair follicle testing, or other drug screening program as directed by the Board or its designee, at
7 Respondent's expense, for the entire probation period with the frequency of testing determined by
8 the Board or its designee, required Respondent to fully cooperate with the Board or its designee
9 and submit to testing as directed, and stated that any confirmed positive test for alcohol or any
10 drug not lawfully prescribed as part of a documented medical treatment would be considered a
11 violation of probation. On or about August 6, 2013, a biological fluid sample submitted by
12 Respondent tested positive for ETG/ETS (alcohol). This confirmed positive test for alcohol
13 subjects Respondent's License to revocation.

14
15 FIFTH CAUSE TO REVOKE PROBATION

16 (Failure to Identify Prescription Coordinator/Monitor)

17 12. At all times after the effective date (May 8, 2013) of the Decision and Order imposing
18 probation on Respondent's License, Term and Condition 16 of that Order required that, within
19 thirty (30) days, Respondent submit to the Board, for its prior approval, the name and
20 qualifications of a single physician, nurse practitioner, physician assistant, or psychiatrist of
21 Respondent's choice, who would coordinate and monitor any prescriptions for Respondent for
22 dangerous drugs, controlled substances, or mood-altering drugs. Respondent failed to timely
23 submit the name or qualifications of a prescription coordinator/monitor for approval. This failure
24 to timely submit a prescription coordinator/monitor subjects Respondent's License to revocation.

25
26 OTHER MATTERS – EXTENSION OF PROBATION

27 13. At all times after the effective date (May 8, 2013) of the Decision and Order imposing
28 probation on Respondent's License, Term and Condition 19 of that Order provided:

19. **Violation of Probation.**

If respondent has not complied with any term or condition of probation, the board shall have continuing jurisdiction over respondent, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation, to terminate probation, and to impose the penalty that was stayed. If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed.

If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended until the petition to revoke probation or accusation is heard and decided.

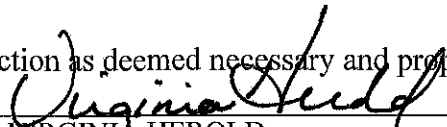
14. Pursuant to the operation of Term and Condition 19 of the probation order applicable to Respondent's License, probation is automatically extended by the filing hereof, and/or by Respondent's failure to comply with the terms and conditions of probation, until such time as this Petition to Revoke Probation is heard and decided, or until the Board has taken other action as deemed appropriate to treat the failure to comply as a violation of probation.

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. 3946 and imposing the disciplinary order that was stayed, thereby revoking Pharmacy Technician License No. TCH 97367, issued to Reynerio Fernandez-Orozco;
2. Revoking or suspending Pharmacy Technician License No. TCH 97367, issued to Reynerio Fernandez-Orozco;
3. Taking such other and further action as deemed necessary and proper.

DATED: 12/6/13


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

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Exhibit A

Decision and Order

Board of Pharmacy Case No. 3946

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Attorney General of California
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JURISDICTION AND STATUTORY PROVISIONS

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FIRST CAUSE TO REVOKE PROBATION

(Failure to Attend and/or Document Attendance at Recovery Group(s))

8. At all times after the effective date (May 8, 2013) of the Decision and Order imposing probation on Respondent's License, Term and Condition 12 of that Order required that, within thirty (30) days, Respondent begin regular attendance at a recognized and established substance abuse recovery support group in California (e.g., Alcoholics Anonymous, Narcotics Anonymous) approved by the Board or its designee, attending at least one group meeting per week unless otherwise directed by the Board or its designee, and that Respondent submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation. Respondent failed to timely begin or continue attendance at a recognized and established substance abuse recovery support group, and/or failed to submit adequate documentation of such attendance to the Board. This failure to attend and/or to submit satisfactory proof of attendance subjects Respondent's License to revocation.\

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If a petition to revoke probation or an accusation is filed against respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended until the petition to revoke probation or accusation is heard and decided.

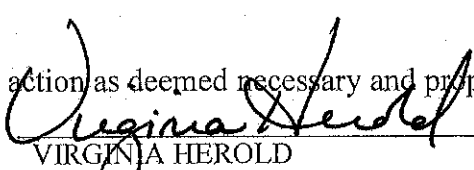
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PRAYER

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:

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DATED: 12/6/13


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

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40812273.doc

Exhibit A

Decision and Order

Board of Pharmacy Case No. 3946

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

In the Matter of the Statement of Issues Against:

Case No. 3946

REYNERIO FERNANDEZ-OROZCO
1436 167TH Avenue
San Leandro, CA 94578-2316

Application for Pharmacy Technician
Registration

Respondent.

DECISION AND ORDER

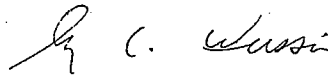
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on May 8, 2013.

It is so ORDERED on April 8, 2013.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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

10 In the Matter of the Statement of Issues Against:

Case No. 3946

11 **REYNERIO FERNANDEZ-OROZCO**

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

12 Respondent.
13

14 In the interest of a prompt and speedy settlement of this matter, consistent with the public
15 interest and responsibility of the Board of Pharmacy, Department of Consumer Affairs, the parties
16 hereby agree to the following Stipulated Settlement and Disciplinary Order to be submitted to the
17 Board for approval and adoption as the final disposition of the Statement of Issues.

18 PARTIES

19 1. Virginia Herold (Complainant), Executive Officer, Board of Pharmacy, brought this
20 action solely in her official capacity and is represented by Kamala D. Harris, Attorney General of
21 the State of California, by Joshua A. Room, Supervising Deputy Attorney General.

22 2. Respondent Reynerio Fernandez-Orozco (Respondent) is representing himself in this
23 proceeding and has chosen not to exercise his right to be represented by counsel.

24 3. On or about October 21, 2009, the Board of Pharmacy, Department of Consumer
25 Affairs received an application for an Application for Registration as a Pharmacy Technician
26 from Reynerio Fernandez-Orozco (Respondent). On or about September 16, 2009, Reynerio
27 Fernandez-Orozco certified under penalty of perjury to the truthfulness of all statements, answers,
28 and representations in the application. The Board denied the application on August 18, 2010.

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JURISDICTION

4. Statement of Issues No. 3946 was filed before the Board of Pharmacy (Board), and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on June 24, 2011. A copy of Statement of Issues No. 3946 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands, the charges and allegations in Statement of Issues No. 3946. Respondent has also carefully read, and understands the effects of, this Stipulated Settlement and Disciplinary Order.

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

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

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 3946.

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

RESERVATION

10. Admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board of Pharmacy or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

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11. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this stipulation, including facsimile signatures thereto, shall have the same force and effect as the originals.

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

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

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that, upon satisfaction of statutory and regulatory requirements for issuance thereof, a Pharmacy Technician License shall be issued to Reynerio Fernandez-Orozco (Respondent), and immediately revoked. Revocation is stayed and the License is placed on probation for five (5) years on the terms and conditions detailed below

1. Certification Prior to Resuming Work

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

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

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

2. Obey All Laws

Respondent shall obey all state and federal laws and regulations.

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

- an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws

///

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

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

9 **3. Report to the Board**

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

18 **4. Interview with the Board**

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

24 **5. Cooperate with Board Staff**

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

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1 **6. Notice to Employers**

2 During the period of probation, respondent shall notify all present and prospective
3 employers of the decision in case number 3946 and the terms, conditions and restrictions imposed
4 on respondent by the decision, as follows:

5 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
6 respondent undertaking any new employment, respondent shall cause his direct supervisor,
7 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
8 tenure of employment) and owner to report to the board in writing acknowledging that the listed
9 individual(s) has/have read the decision in case number 3946 and the terms and conditions
10 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
11 supervisor(s) submit timely acknowledgement(s) to the board.

12 If respondent works for or is employed by or through a pharmacy employment service,
13 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
14 of the terms and conditions of the decision in case number 3946 in advance of commencing work
15 at each pharmacy. A record of this notification must be provided to the board upon request.

16 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
17 (15) days of respondent undertaking any new employment by or through a pharmacy employment
18 service, respondent shall cause his direct supervisor with the pharmacy employment service to
19 report to the board in writing acknowledging that he or she has read the decision in case number
20 3946 and the terms and conditions imposed thereby. It shall be respondent's responsibility to
21 ensure that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

22 Failure to timely notify present or prospective employer(s) or to cause employer(s) to
23 submit timely acknowledgements to the board shall be considered a violation of probation.

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

1 7. **Probation Monitoring Costs**

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

6 8. **Status of License**

7 Respondent shall, at all times while on probation, maintain an active, current pharmacy
8 technician license with the board, including any period during which suspension or probation is
9 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

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

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

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

22 10. **Notification of a Change in Employment, Name, Address, or Phone**

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, mailing address, or phone number. Failure to timely notify the board of any change in
28 employer, name, address, or phone number shall be considered a violation of probation.

1 **11. Tolling of Probation**

2 Except during periods of suspension, respondent shall, at all times while on probation, be
3 employed as a pharmacy technician in California for a minimum of forty (40) hours per calendar
4 month. Any month during which this minimum is not met shall toll the period of probation, i.e.,
5 the period of probation shall be extended by one month for each month during which this
6 minimum is not met. During any such period of tolling of probation, respondent must
7 nonetheless comply with all terms and conditions of probation.

8 Should respondent, regardless of residency, for any reason (including vacation) cease
9 working as a pharmacy technician for a minimum of forty (40) hours per calendar month in
10 California, respondent must notify the board in writing within ten (10) days of cessation of work
11 and must further notify the board in writing within ten (10) days of the resumption of the work.
12 Any failure to provide such notification(s) shall be considered a violation of probation.

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

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

21 **12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups**

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

1 **13. Abstain from Drugs and Alcohol Use**

2 Respondent shall completely abstain from the possession or use of alcohol, controlled
3 substances, dangerous drugs and their associated paraphernalia except when the drugs are
4 lawfully prescribed by a licensed practitioner as part of a documented medical treatment. Upon
5 request of the board or its designee, respondent shall provide documentation from the licensed
6 practitioner that the prescription for the drug was legitimately issued and is a necessary part of the
7 treatment of the respondent. Failure to timely provide such documentation shall be considered a
8 violation of probation. Respondent shall ensure that he is not in the same physical location as
9 individuals who are using illicit substances even if respondent is not personally ingesting the
10 drugs. Any possession or use of alcohol, controlled substances, or their associated paraphernalia
11 not supported by the documentation timely provided, and/or any physical proximity to persons
12 using illicit substances, shall be considered a violation of probation.

13 **14. Random Drug Screening**

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

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

10 Failure to comply with any such suspension shall be considered a violation of probation.

11 **15. Work Site Monitor**

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

22 **16. Prescription Coordination and Monitoring of Prescription Use**

23 Within thirty (30) days of the effective date of this decision, respondent shall submit to the
24 board, for its prior approval, the name and qualifications of a single physician, nurse practitioner,
25 physician assistant, or psychiatrist of respondent's choice, who shall be aware of the respondent's
26 history with the use of methamphetamine and who will coordinate and monitor any prescriptions
27 for respondent for dangerous drugs, controlled substances or mood-altering drugs. The approved
28 practitioner shall be provided with a copy of the board's Statement of Issues and decision.

1 A record of this notification must be provided to the board upon request. Respondent shall
2 sign a release authorizing the practitioner to communicate with the board about respondent's
3 treatment(s). The coordinating physician, nurse practitioner, physician assistant, or psychiatrist
4 shall report to the board on a quarterly basis for the duration of probation regarding respondent's
5 compliance with this condition. If any substances considered addictive have been prescribed, the
6 report shall identify a program for the time limited use of any such substances.

7 The board may require that the single coordinating physician, nurse practitioner, physician
8 assistant or psychiatrist be a specialist in addictive medicine, or consult a specialist in addictive
9 medicine. Should respondent, for any reason, cease supervision by the approved practitioner,
10 respondent shall notify the board immediately and, within thirty (30) days of ceasing, submit the
11 name of a replacement physician, nurse practitioner, physician assistant, or psychiatrist of
12 respondent's choice to the board or its designee for its prior approval. Failure to timely submit
13 the selected practitioner or replacement practitioner to the board for approval, or to ensure the
14 required reporting thereby on the quarterly reports, shall be considered a violation of probation.

15 If at any time an approved practitioner determines that respondent is unable to practice
16 safely or independently as a pharmacy technician, the practitioner shall notify the board
17 immediately by telephone and follow up by written letter within three (3) working days. Upon
18 notification by the board or its designee of this determination, respondent shall be automatically
19 suspended and shall not resume practice until notified by the board that practice may be resumed.

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

1 Failure to comply with any such suspension shall be considered a violation of probation.

2 **17. Notification of Departure**

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

7 **18. License Surrender While on Probation/Suspension**

8 Following the effective date of this decision, should respondent cease work due to
9 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
10 respondent may tender his pharmacy technician license to the board for surrender. The board or
11 its designee shall have the discretion whether to grant the request for surrender or take any other
12 action it deems appropriate. Upon formal acceptance of the surrender of the license, respondent
13 will no longer be subject to the terms and conditions of probation. This surrender constitutes a
14 record of discipline and shall become a part of the respondent's license 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 the surrender is accepted.
17 Respondent may not reapply for any license, permit, or registration from the board for three (3)
18 years from the effective date of the surrender. Respondent shall meet all requirements applicable
19 to the license sought as of the date the application for that license is submitted to the board.

20 **19. Violation of Probation**

21 If respondent has not complied with any term or condition of probation, the board shall
22 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
23 all terms and conditions have been satisfied or the board has taken other action as deemed
24 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
25 to impose the penalty that was stayed. If respondent violates probation in any respect, the board,
26 after giving respondent notice and an opportunity to be heard, may revoke probation and carry out
27 the disciplinary order that was stayed.

28 ///

1 If a petition to revoke probation or an accusation is filed against respondent during
2 probation, the board shall have continuing jurisdiction, and the period of probation shall be
3 automatically extended until the petition to revoke probation or accusation is heard and decided.

4 **20. Completion of Probation**

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

7
8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
10 stipulation and the effect it has on my Application for Registration as a Pharmacy Technician, and
11 resulting License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily,
12 knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

13
14 DATED: 2/26/13 Rey Fernandez
15 REYNERIO FERNANDEZ-OROZCO
16 Respondent

17 ENDORSEMENT

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

20 Dated: 2/28/2013
21 Respectfully submitted,
22 KAMALA D. HARRIS
23 Attorney General of California
24 FRANK H. PACOE
25 Supervising Deputy Attorney General
26 Joshua A. Room
27 JOSHUA A. ROOM
28 Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 3946

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2 FRANK H. PACOE
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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 Against:

Case No. 3946

11 **REYNERIO FERNANDEZ-OROZCO**
12 **251 Ebony Way**
13 **Hayward, CA 94544**

STATEMENT OF ISSUES

14 **Applicant for Pharmacy Technician License**

15 **Respondent.**

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 21, 2009, the Board of Pharmacy, Department of Consumer
21 Affairs received an application for an Application for Registration as a Pharmacy Technician
22 from Reynerio Fernandez-Orozco (Respondent). On or about September 16, 2009, Reynerio
23 Fernandez-Orozco certified under penalty of perjury to the truthfulness of all statements, answers,
24 and representations in the application. The Board denied the application on August 18, 2010.

25 JURISDICTION

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

1 “(c) A board may deny a license regulated by this code on the ground that the applicant
2 knowingly made a false statement of fact required to be revealed in the application”

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

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

10
11 FIRST CAUSE FOR DENIAL OF APPLICATION

12 (Conviction of Substantially Related Crime(s))

13 8. Respondent's application is subject to denial under the following section(s) of the
14 Code: 480(a)(1); 480(a)(3) by reference to 4301(1); and/or 4300(c) by reference to 4301(1) and
15 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
16 crime, in that on or about August 26, 2008, in *People v. Reyneria Fernandez-Orozco*, Case No.
17 2370377 in San Francisco County Superior Court, Respondent was convicted of violating Vehicle
18 Code section 23152(a) (Driving while under the influence of alcohol/drugs) and Vehicle Code
19 section 23152(b) (Driving with blood alcohol level of 0.08% or more), both misdemeanors, and
20 each with special allegations made pursuant to Vehicle Code section 23578 for having a blood
21 alcohol level of 0.15% or more. The conviction was entered as follows:

22 a. On or about June 16, 2008, based on an incident that took place on or about
23 May 31, 2008, Respondent was charged by Misdemeanor Complaint in Case No. 2370377 under
24 (1) Vehicle Code section 23152(a) (Driving under influence of alcohol), a misdemeanor, with a
25 special allegation pursuant to Vehicle Code section 23578 for having a blood alcohol level of
26 0.15% or more; and (2) Vehicle Code section 23152(b) (Driving with blood alcohol of 0.08% or
27 more), a misdemeanor, with a special allegation pursuant to Vehicle Code section 23578 for
28 having a blood alcohol level of 0.15% or more.

1 b. On or about August 26, 2008, Respondent pleaded nolo contendere and was
2 found guilty of both counts in the Complaint. Imposition of sentence was suspended in favor of
3 an order of probation for three (3) years, on terms and conditions including credit for time served
4 of one (1) day in County Jail, enrollment in the 3-month First Offender Program, fines and fees.

5
6 SECOND CAUSE FOR DENIAL OF APPLICATION

7 (Dangerous or Injurious Use of Alcohol)

8 9. Respondent's application is subject to denial under the following section(s) of the
9 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as
10 described in paragraph 8 above, Respondent made dangerous or injurious use of alcohol.

11
12 THIRD CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of Substantially Related Crime(s))

14 10. Respondent's application is subject to denial under the following section(s) of the
15 Code: 480(a)(1); 480(a)(3) by reference to 4301(l); and/or 4300(c) by reference to 4301(l) and
16 California Code of Regulations, title 16, section 1770, for conviction of a substantially related
17 crime, in that on or about January 12, 2010, in *People v. Reyneria Ivan Fernandez-Orozco*, Case
18 No. CC964037 in Santa Clara County Superior Court, Respondent was convicted of violating (1)
19 Vehicle Code section 23152(b) (Driving with blood alcohol level of 0.08% or more), with a prior
20 conviction allegation regarding his 2008 conviction, a misdemeanor; (2) Vehicle Code section
21 14601.1(a) (Driving while license suspended or revoked for specified reasons), a misdemeanor;
22 (3) Vehicle Code section 14601.2(a) (Driving while license suspended or revoked due to DUI);
23 and (4) Vehicle Code section 16028(a) (Failure to provide evidence of financial responsibility
24 [proof of insurance]), an infraction. The conviction was entered as follows:

25 a. On or about November 28, 2009, Respondent was observed driving erratically
26 by officers of the California Highway Patrol. After he was pulled over, he exhibited signs and an
27 odor of intoxication, and signs of impairment under Field Sobriety Testing. He also admitted to
28 having consumed alcohol before driving. A blood test confirmed a level of 0.13% BAC.

1 b. On or about December 14, 2009, Respondent was charged by Misdemeanor
2 Complaint in Case No. CC964037 under (1) Vehicle Code section 23152(a) (Driving under
3 influence of alcohol), a misdemeanor, with a prior conviction allegation; (2) Vehicle Code section
4 23152(b) (Driving with blood alcohol of 0.08% or more), a misdemeanor, with a prior conviction
5 allegation; (3) Vehicle Code section 14601.1(a) (Driving while license suspended or revoked for
6 specified reasons), a misdemeanor; (4) Vehicle Code section 14601.2(a) (Driving while license
7 suspended or revoked due to DUI); and (5) Vehicle Code section 16028(a) (Failure to provide
8 evidence of financial responsibility [proof of insurance]), an infraction.

9 b. On or about January 12, 2010, Respondent pleaded guilty to counts (2), (3), (4)
10 and (5) in the Complaint. Count (1) was dismissed pursuant to plea. Imposition of sentence was
11 suspended in favor of an order of court probation for three (3) years, on terms and conditions
12 including forty (40) days in WWP (mandated work-release program), enrollment in the Multiple
13 Offender Program, an Ignition Interlock Device (IID) placed on his vehicle for the three (3) year
14 probation period, and multiple fines and fees.

15
16 FOURTH CAUSE FOR DENIAL OF APPLICATION

17 (Dangerous or Injurious Use of Alcohol)

18 11. Respondent's application is subject to denial under the following section(s) of the
19 Code: 480(a)(3) by reference to 4301(h); and/or 4300(c) by reference to 4301(h), in that, as
20 described in paragraph 10 above, Respondent made dangerous or injurious use of alcohol.

21
22 FIFTH CAUSE FOR DENIAL OF APPLICATION

23 (Unprofessional Conduct)

24 12. Respondent's application is subject to denial under the following section(s) of the
25 Code: 480(a)(3) by reference to 4301; and/or 4300(c) by reference to 4301, in that, as described
26 in paragraphs 8-11 above, Respondent engaged in unprofessional conduct.

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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 Reynerio Fernandez-Orozco to be a pharmacy technician;
2. Taking such other and further action as is deemed necessary and proper.

DATED: 6/21/11 Virginia Herold

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

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