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

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

Case No. 5012

13 **ALLAN DIAZ DELEON**
2382-1 Adirondack Row
14 San Diego, CA 92139

PETITION TO REVOKE PROBATION

15 **Pharmacy Technician Registration**
16 **No. TCH 94059**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about October 19, 2011, the Board of Pharmacy issued Pharmacy Technician
24 Registration Number TCH 94059 to Allan Diaz DeLeon (Respondent). The Pharmacy
25 Technician Registration expired on January 31, 2013, and has not been renewed.

26 3. In a disciplinary action entitled "*In the Matter of the Statement of Issues Against*
27 *Allan Diaz DeLeon*," Case No. 3995, the Board of Pharmacy issued a decision, effective October
28 19, 2011, in which a Pharmacy Technician License was issued to Respondent. The Pharmacy

1 Technician Registration was immediately revoked, however, the revocation was stayed and
2 Respondent's Pharmacy Technician Registration was placed on probation for a period of five (5)
3 years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is
4 incorporated by reference.

5 JURISDICTION

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

9 5. Probation Condition Number 12 (Violation of Probation) states:

10 If a Respondent has not complied with any term or condition of probation, the
11 Board shall have continuing jurisdiction over Respondent, and probation shall
12 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.

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

18 6. Section 4300, subdivision (d) of the Code states:

19 The board may initiate disciplinary proceedings to revoke or suspend any
20 probationary certificate of licensure for any violation of the terms and conditions of
21 probation. Upon satisfactory completion of probation, the board shall convert the
probationary certificate to a regular certificate, free of conditions.

22 7. Section 4300.1 of the Code states:

23 The expiration, cancellation, forfeiture, or suspension of a board-issued license by
24 operation of law or by order or decision of the board or a court of law, the placement of a
25 license on a retired status, or the voluntary surrender of a license by a licensee shall not
26 deprive the board of jurisdiction to commence or proceed with any investigation of, or
action or disciplinary proceeding against, the licensee or to render a decision suspending
or revoking the license.

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1 **FIRST CAUSE TO REVOKE PROBATION**

2 **(Certification Prior to Beginning Work)**

3 8. At all times after the effective date of Respondent's probation, Condition 1 stated:

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

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

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

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

24 9. Respondent's probation is subject to revocation because he failed to comply with
25 Probation Condition 1, referenced above. The facts and circumstances regarding this violation
26 are as follows:

27 a. On or about October 11, 2011, Respondent attended a probation office
28 conference. At the conference, a Board representative thoroughly reviewed the terms and
conditions of Respondent's probation in detail. Respondent signed a declaration confirming his
understanding of the terms and conditions.

b. Prior to one year from the effective date of probation (on October 17, 2012),
Respondent was required to submit proof of certification by the Pharmacy Technician
Certification Board (PTCB). After Respondent failed to submit proof that he had completed the
PTCB requirements, his pharmacy technician registration was suspended. In a letter to
Respondent dated September 12, 2013, a Board representative informed Respondent that he was
non-compliant with Condition 1 of his probation. Respondent was directed to submit proof of

1 certification with PTCB no later than September 26, 2013. Respondent never complied with the
2 Board's directive.

3 c. In a telephone call to Respondent on or about April 5, 2013, a Board
4 representative spoke to Respondent and discussed the terms of his probation with which he was
5 non-compliant. Respondent was told that non-compliance could result in disciplinary action
6 against his registration. Respondent stated that he did not intend to comply. Respondent was told
7 he could surrender his registration; he stated that he was not going to comply.

8 SECOND CAUSE TO REVOKE PROBATION

9 (Report to the Board)

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

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

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

23 a. On or about October 11, 2011, Respondent attended a probation office
24 conference. At the conference, a Board representative thoroughly reviewed the terms and
25 conditions of Respondent's probation in detail. Respondent signed a declaration confirming his
26 understanding of the terms and conditions.

27 b. In a letter to Respondent dated July 10, 2012, a Board representative informed
28 Respondent that he was non-compliant with Condition 3 of his probation in that the Board had
not received any quarterly reports from Respondent since the start of his probation. Respondent
was directed to submit a comprehensive quarterly report for the period from October 19, 2011
through June 30, 2012, due no later than July 17, 2012. Respondent failed to submit any
quarterly reports.

1 c. In a telephone call to Respondent on or about April 5, 2013, a Board
2 representative spoke to Respondent and discussed the terms of his probation with which he was
3 non-compliant. Respondent was told that non-compliance could result in disciplinary action
4 against his registration. Respondent stated that he did not intend to comply. Respondent was told
5 he could surrender his registration; he stated that he was not going to comply.

6 **THIRD CAUSE TO REVOKE PROBATION**

7 **(Probation Monitoring Costs)**

8 12. At all times after the effective date of Respondent's probation, Condition 7 stated:

9 Respondent shall pay any costs associated with probation monitoring as
10 determined by the Board each and every year of probation. Such costs shall be payable
11 to the Board on a schedule as directed by the Board or its designee. Failure to pay such
12 costs by the deadline(s) as directed shall be considered a violation of probation.

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

15 a. On or about October 11, 2011, Respondent attended a probation office
16 conference. At the conference, a Board representative thoroughly reviewed the terms and
17 conditions of Respondent's probation in detail. Respondent signed a declaration confirming his
18 understanding of the terms and conditions.

19 b. In a letter to Respondent dated December 5, 2012, the Board informed
20 Respondent that he was non-compliant with Condition 7 of his probation in that Respondent
21 owed \$127.50 in costs associated with probation monitoring for the period of October 11, 2011
22 through October 18, 2012. Respondent has failed to make any payments on costs due.

23 c. In a telephone call to Respondent on or about April 5, 2013, a Board
24 representative spoke to Respondent and discussed the terms of his probation with which he was
25 non-compliant. Respondent was told that non-compliance could result in disciplinary action
26 against his registration. Respondent stated that he did not intend to comply. Respondent was told
27 he could surrender his registration; he stated that he was not going to comply.

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1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Status of License)**

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

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

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

12 15. Respondent's probation is subject to revocation because he failed to comply with
13 Probation Condition 8, referenced above. The facts and circumstances regarding this violation
14 are as follows:

15 a. On or about October 11, 2011, Respondent attended a probation office
16 conference. At the conference, a Board representative thoroughly reviewed the terms and
17 conditions of Respondent's probation in detail. Respondent signed a declaration confirming his
18 understanding of the terms and conditions.

19 b. Respondent allowed his pharmacy technician registration to expire on January
20 31, 2013. In a letter to Respondent dated February 11, 2013, a Board representative informed
21 Respondent that he was non-compliant with Condition 8 of his probation. Respondent was
22 directed to submit his registration renewal to the Board no later than February 28, 2013.
23 Respondent failed to renew his registration.

24 c. In a telephone call to Respondent on or about April 5, 2013, a Board
25 representative spoke to Respondent and discussed the terms of his probation with which he was
26 non-compliant. Respondent was told that non-compliance could result in disciplinary action
27 against his registration. Respondent stated that he did not intend to comply. Respondent was told
28 he could surrender his registration; he stated that he was not going to comply.

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1 **DISCIPLINARY CONSIDERATIONS**

2 16. To determine the degree of discipline, if any, to be imposed on Respondent,
3 Complainant alleges that on or about February 5, 1992, in a prior criminal proceeding entitled
4 *People v. Alan Diaz DeLeon*, in San Diego County Superior Court Case No. CR119966,
5 Respondent was convicted for violating Penal Code section 220, assault with intent to commit
6 rape, a felony, and was granted formal probation for three years, sentenced to serve 270 days in
7 jail, with credit for 146 days, and ordered to register as a sex offender. The record of the criminal
8 proceeding is incorporated as if fully set forth.

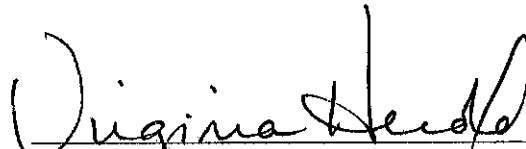
9 **PRAYER**

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

- 12 1. Revoking the probation that was granted by the Board of Pharmacy in Case No. 3995
13 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician
14 Registration No. TCH 94059 issued to Allan Diaz DeLeon;
- 15 2. Revoking or suspending Pharmacy Technician Registration No. TCH 94059, issued
16 to Allan Diaz DeLeon;
- 17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: _____

3/1/14



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

20
21
22
23
24 SD2013706376

Exhibit A

Decision and Order

Board of Pharmacy Case No. 3995

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

In the Matter of the Statement of Issues Against:

Case No. 3995

ALLAN DIAZ DELEON
2382 Adirondack Row, Unit 1
San Diego, CA 92139

Applicant for Pharmacy Technician Registration

Respondent.

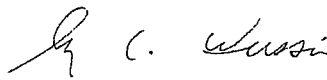
DECISION AND ORDER

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 October 19, 2011.

It is so ORDERED on September 19, 2011.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA



By

STANLEY C. WEISSER
Board President

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Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
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7 Facsimile: (619) 645-2061
Attorneys for Complainant

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

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

13 **ALLAN DIAZ DELEON**
14 **2382 Adirondack Row, Unit 1**
San Diego, CA 92139

15 Respondent.

Case No. 3995

OAH No. 2011061349

16
17 **STIPULATED SETTLEMENT AND**
DISCIPLINARY ORDER

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

19 **PARTIES**

20 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy.
21 She brought this action solely in her official capacity and is represented in this matter by Kamala
22 D. Harris, Attorney General of the State of California, by Amanda Dodds, Senior Legal Analyst.

23 2. Allan Diaz DeLeon (Respondent) is representing himself in this proceeding and has
24 chosen not to exercise his right to be represented by counsel.

25 3. On or about July 6, 2009, Respondent filed an application dated June 17, 2009, with
26 the Board of Pharmacy to obtain a Pharmacy Technician Registration.

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1 **JURISDICTION**

2 4. Statement of Issues No. 3995 was filed before the Board of Pharmacy (Board),
3 Department of Consumer Affairs, and is currently pending against Respondent. The Statement of
4 Issues and all other statutorily required documents were properly served on Respondent on May
5 27, 2011. A copy of Statement of Issues No. 3995 is attached as Exhibit A and incorporated
6 herein by reference.

7 **ADVISEMENT AND WAIVERS**

8 5. Respondent has carefully read, and understands the charges and allegations in
9 Statement of Issues No. 3995. Respondent has also carefully read, and understands the effects of
10 this Stipulated Settlement and Disciplinary Order.

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

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

20 **CULPABILITY**

21 8. Respondent admits the truth of each and every charge and allegation in Statement of
22 Issues No. 3995.

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

26 **CONTINGENCY**

27 10. This stipulation shall be subject to approval by the Board of Pharmacy. Respondent
28 understands and agrees that counsel for Complainant and the staff of the Board of Pharmacy may

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

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

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

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

20 **DISCIPLINARY ORDER**

21 IT IS HEREBY ORDERED that upon satisfaction of all statutory and regulatory
22 requirements for issuance of a license, a license shall be issued to Respondent and immediately
23 revoked; the order of revocation is stayed and Respondent is placed on probation for five (5)
24 years upon the following terms and conditions:

25 1. **Certification Prior to Beginning Work**

26 Respondent shall be automatically suspended from working as a pharmacy technician until
27 he is certified as defined by Business and Professions Code section 4202, subdivision (a)(4) and
28 provides satisfactory proof of certification to the Board. Respondent shall not begin working as a

1 pharmacy technician until notified by the Board. Failure to achieve certification within one (1)
2 year shall be considered a violation of probation. Respondent shall not begin working as a
3 pharmacy technician until notified by the Board.

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

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

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

16 **2. Obey All Laws**

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

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

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

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

1 **3. Report to the Board**

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

10 **4. Interview with the Board**

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

16 **5. Cooperate with Board Staff**

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

20 **6. Notice to Employers**

21 During the period of probation, Respondent shall notify all present and prospective
22 employers of the decision in case number 3995 and the terms, conditions and restrictions imposed
23 on Respondent by the decision, as follows:

24 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
25 Respondent undertaking any new employment, Respondent shall cause his direct supervisor,
26 pharmacist-in-charge (including each new pharmacist-in-charge employed during Respondent's
27 tenure of employment) and owner to report to the Board in writing acknowledging that the listed
28 individual(s) has/have read the decision in case number 3995 and the terms and conditions

1 imposed thereby. It shall be Respondent's responsibility to ensure that his employer(s) and/or
2 supervisor(s) submit timely acknowledgement(s) to the Board.

3 If Respondent works for or is employed by or through a pharmacy employment service,
4 Respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
5 of the terms and conditions of the decision in case number 3995 in advance of the Respondent
6 commencing work at each pharmacy. A record of this notification must be provided to the Board
7 upon request.

8 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
9 (15) days of Respondent undertaking any new employment by or through a pharmacy
10 employment service, Respondent shall cause his direct supervisor with the pharmacy employment
11 service to report to the Board in writing acknowledging that he has read the decision in case
12 number 3995 and the terms and conditions imposed thereby. It shall be Respondent's
13 responsibility to ensure that his employer(s) and/or supervisor(s) submit timely
14 acknowledgment(s) to the Board.

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

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

23 7. Probation Monitoring Costs

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

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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

1 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
2 shall further notify the Board in writing within ten (10) days of a change in name, residence
3 address and mailing address, or phone number.

4 Failure to timely notify the Board of any change in employer(s), name(s), address(es), or
5 phone number(s) shall be considered a violation of probation.

6 **11. Tolling of Probation**

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

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

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

21 "Cessation of work" means calendar month during which Respondent is not
22 working for at least twenty (20) hours as a pharmacy technician, as defined in
23 Business and Professions Code section 4115. "Resumption of work" means any
24 calendar month during which Respondent is working as a pharmacy technician for at
25 least twenty (20) hours as a pharmacy technician as defined by Business and
26 Professions Code section 4115.

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1 **12. Violation of Probation**

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

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

14 **13. 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 **14. Completion of Probation**

23 Upon written notice by the Board indicating successful completion of probation,
24 Respondent's pharmacy technician license will be fully restored.

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ACCEPTANCE

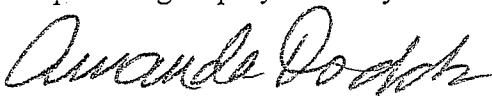
I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Pharmacy Technician Registration. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the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

DATED: 7/15/11 
ALLAN DÍAZ DELEON
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: 7/18/2011

Respectfully submitted,
KAMALA D. HARRIS
Attorney General of California
LINDA K. SCHNEIDER
Supervising Deputy Attorney General

AMANDA DODDS
Senior Legal Analyst
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 3995

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2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 State Bar No. 101336
AMANDA DODDS
4 Senior Legal Analyst
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Attorneys for Complainant

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

11 In the Matter of the Statement of Issues Against: Case No. 3995

12 **ALLAN DIAZ DELEON**
13 **2382 Adirondack Row, Unit 1**
14 **San Diego, CA 92139**

STATEMENT OF ISSUES

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 July 6, 2009, the Board of Pharmacy, Department of Consumer Affairs
21 received an application for a Pharmacy Technician Registration from Allan Diaz DeLeon
22 (Respondent). On or about June 17, 2009, Allan Diaz DeLeon certified under penalty of perjury
23 to the truthfulness of all statements, answers, and representations in the application. The Board
24 denied the application on October 26, 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.

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4. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

(3) (A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made. . . .

5. Section 4300, subdivision (c) of the Code states "The board may refuse a license to any applicant guilty of unprofessional conduct."

STATUTORY PROVISIONS

6. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

....

7. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

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(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

8. Section 493 of the Code states:

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

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

9. Section 4301 of the Code states:

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

....

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

....

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

1 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
2 dismissing the accusation, information, or indictment. . . .

3 **REGULATORY PROVISIONS**

4 10. California Code of Regulations, title 16, section 1769 states:

5 (a) When considering the denial of a facility or personal license under Section
6 480 of the Business and Professions Code, the board, in evaluating the rehabilitation
7 of the applicant and his present eligibility for licensing or registration, will consider
8 the following criteria:

9 (1) The nature and severity of the act(s) or offense(s) under consideration as
10 grounds for denial.

11 (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
12 consideration as grounds for denial under Section 480 of the Business and Professions
13 Code.

14 (3) The time that has elapsed since commission of the act(s) or crime(s) referred
15 to in subdivision (1) or (2).

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

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

19

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

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

28 **FIRST CAUSE FOR DENIAL OF APPLICATION**

(January 8, 1992 Criminal Conviction for Assault

With Intent to Commit Rape on December 9, 1990)

12. Respondent's application for registration as a pharmacy technician is subject to denial
under sections 480, subdivision (a)(1) of the Code in that Respondent was convicted of a crime
that is substantially related to the qualifications, duties, and functions of a pharmacy technician.

The circumstances are as follows:

///

1 a. On or about January 8, 1992, in a criminal proceeding entitled *People of the*
2 *State of California v. Alan Diaz Deleon*, in San Diego County Superior Court, case number
3 CR119966, Respondent was convicted on his plea of guilty to violating Penal Code section 220,
4 assault with intent to commit rape, a felony. In the plea agreement, which dismissed Count 1
5 (forcible rape, Pen. Code, § 261(2)), and Count 2 (rape by foreign object, Pen. Code, § 289(a)),
6 Respondent stated that he pled guilty to avoid the potential of more serious punishment if the
7 matter went before a jury.

8 b. As a result of the conviction, on or about February 5, 1992, Respondent was
9 sentenced to serve 270 days in the county jail, with credit for 146 days. Respondent was placed
10 on formal probation for a period of three years, and ordered to pay fees, fines, and restitution in
11 the amount of \$1,600, plus the cost of felony probation. Respondent was also ordered to register
12 as a sex offender. On or about April 18, 2007, the court granted Respondent's Petition for Relief,
13 set aside the conviction, and dismissed the charges, pursuant to Penal Code section 1203.4.

14 c. The circumstances that led to the conviction are that on or about December 9,
15 1990, in National City, California, Respondent sexually assaulted a female victim.

16 **SECOND CAUSE FOR DENIAL OF APPLICATION**

17 **(Commission of Act That if Done by a Licentiate**

18 **Would be Grounds for Suspension or Revocation of License)**

19 13. Respondent's application for registration as a pharmacy technician is subject to denial
20 under section 480, subdivision (a)(3)(A) in that he committed acts that would be grounds for
21 suspension or revocation of a pharmacy technician registration as follows:

22 a. Respondent was convicted of a crime substantially related to the qualifications,
23 functions, and duties of a pharmacy technician, as detailed in paragraph 12, above, which is a
24 violation of section 4301, subdivision (l) of the Code.

25 b. Respondent committed a sexual assault, an act of moral turpitude, as detailed in
26 paragraph 12, above, which is a violation of section 4301, subdivision (f) of the Code

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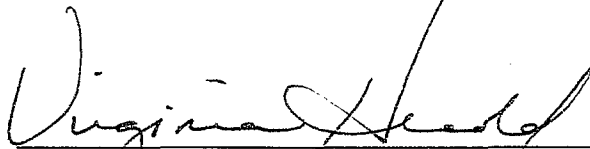
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1 **PRAYER**

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

- 4 1. Denying the application of Allan Diaz DeLeon for a Pharmacy Technician
5 Registration;
6 2. Taking such other and further action as deemed necessary and proper.

7
8 DATED: 5/27/11



9 VIRGINIA HEROLD
10 Executive Officer
11 Board of Pharmacy
12 Department of Consumer Affairs
13 State of California
14 *Complainant*

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