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

12 In the Matter of the Petition to Revoke
Probation Against,
13 **JENNIFER JEAN ORTIZ**
14 **755 East Valencia Street**
Anaheim, CA 92805
15 **Pharmacy Technician Registration No. TCH**
16 **43949**
17 Respondent.

Case No. 5860
PETITION TO REVOKE PROBATION

19 Complainant alleges:

20 **PARTIES**

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

24 2. On August 27, 2002, the Board issued Pharmacy Technician Registration Number
25 TCH 43949 to Jennifer Jean Ortiz (Respondent). Respondent has also been known as Jennifer
26 Ortiz, Jennifer York, and Jennifer Jean York. The Pharmacy Technician Registration expired on
27 February 29, 2016, and has not been renewed.

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1 **PRIOR DISCIPLINE**

2 3. In a disciplinary action entitled "In the Matter of Petition for Reinstatement of
3 Revoked License by: Jennifer Ortiz, aka Jennifer York, Petitioner." Case No. 5482, the Board
4 adopted a decision by the Office of Administrative Hearings, effective July 29, 2015, in which
5 Respondent's Pharmacy Technician Registration was revoked. However, the revocation was
6 stayed and Respondent's Pharmacy Technician Registration was placed on probation for a period
7 of three (3) years with certain terms and conditions. A copy of that decision is attached as
8 Exhibit A and is incorporated by reference.

9 **JURISDICTION**

10 4. Section 4300, subdivision (a) of the Business and Professions Code (Code) states
11 "Every license issued may be suspended or revoked."

12 5. Section 4300.1 of the Code states:

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

19 6. This Petition to Revoke Probation is brought before the Board of Pharmacy
20 (Board), Department of Consumer Affairs under Probation Term and Condition Number 14 of
21 the Decision and Order. That term and condition states:

22 **Violation of Probation.**

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

If Petitioner violates probation in any respect, the Board, after giving
Petitioner notice and an opportunity to be heard, may revoke probation and carry
out the disciplinary order that was stayed. Notice and opportunity to be heard are
not required for those provisions stating that a violation thereof may lead to
automatic termination of the stay and/or revocation of the license. If a petition to
revoke probation or an accusation is filed against Petitioner during probation, the

1 Board shall have continuing jurisdiction and the period of probation shall be
2 automatically extended until the petition to revoke probation or accusation is
3 heard and decided.

4 **FIRST CAUSE TO REVOKE PROBATION**

5 **(Cooperate with Board Staff)**

6 7. Condition 4 of Respondent's probation, states:

7 Petitioner shall cooperate with the board's inspection program and with
8 the board's monitoring and investigation of petitioner's compliance with the terms
9 and conditions of his probation. Failure to cooperate shall be considered a
10 violation of probation.

11 8. Respondent's probation is subject to revocation because she failed to fully comply
12 with Probation Condition 4, referenced above. The facts and circumstances regarding this
13 violation are more fully described in the Second, Third, Fourth, and Fifth Causes to Revoke
14 Probation, below, which are incorporated herein by reference.

15 **SECOND CAUSE TO REVOKE PROBATION**

16 **(Report to the Board)**

17 9. Condition 2 of Respondent's probation, states:

18 Petitioner shall report to the board quarterly, on a schedule as directed by
19 the board or its designee. The report shall be made either in person or in writing,
20 as directed. Among other requirements, petitioner shall state in each report under
21 penalty of perjury whether there has been compliance with all the terms and
22 conditions of probation. Failure to submit timely reports in a form as directed
23 shall be considered a violation of probation. Any period(s) of delinquency in
24 submission of reports as directed may be added to the total period of probation.
25 Moreover, if the final probation report is not made as directed, probation shall be
26 automatically extended until such time as the final report is made and accepted by
27 the board.

28 10. Respondent's probation is subject to revocation because she failed to comply with
29 Probation Condition 2, referenced above. The facts and circumstances regarding this violation
30 are that Respondent failed to submit to the Board her Quarterly Report for the 4th quarter of 2015
31 and the 1st and 2nd quarters of 2016 as required by the Board. A Quarterly Report was received
32 on October 16, 2015, however, no Quarterly Report was ever received thereafter.

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1 **THIRD CAUSE TO REVOKE PROBATION**

2 **(Interview with the Board)**

3 11. Condition 3 of Respondent's probation, states:

4 Upon receipt of reasonable prior notice, petitioner shall appear in person
5 for interviews with the board or its designee, at such intervals and locations as are
6 determined by the board or its designee. Failure to appear for any scheduled
7 interview without prior notification to board staff, or failure to appear at two (2)
8 or more scheduled interviews with the board or its designee during the period of
9 probation, shall be considered a violation of probation.

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

13 a. On August 28, 2015, Respondent was sent a letter from the Board
14 directing her to attend an office conference on September 18, 2015, to more fully explain the
15 terms and conditions of her probation. Respondent failed to attend the conference.

16 b. On September 21, 2015, Respondent was sent a non-compliance letter
17 from the Board for failure to appear at the office conference on September 18, 2015, without
18 prior notice, a violation of probation under Term 3.

19 c. On September 30, 2015, Respondent was sent a letter from the Board
20 directing her to attend a rescheduled office conference on October 16, 2015, to more fully
21 explain the terms and conditions of her probation.

22 d. On October 16, 2015, Respondent attended the rescheduled conference in
23 which all terms and conditions of her probation were thoroughly explained. Respondent signed a
24 declaration that she thoroughly understood the terms and conditions of her probation.

25 e. On January 7, 2016, Respondent was sent a letter from the Board directing
26 her to attend an office conference on January 22, 2016, to discuss her non-compliance with the
27 terms and conditions of her probation. Respondent failed to attend the conference.

28 f. On February 1, 2016, Respondent was sent a non-compliance letter from
the Board for failure to appear at the office conference on January 22, 2016, without prior notice,
a violation of probation under Term 3.

1 **FOURTH CAUSE TO REVOKE PROBATION**

2 **(Reimbursement of Board Costs)**

3 13. Condition 7 of Respondent's probation, states:

4 As a condition precedent to successful completion of probation, petitioner
5 shall pay to the board its costs of investigation and prosecution in the amount of
6 \$2,166.75. Petitioner shall make said payments according to a schedule
7 established by the board. There shall be no deviation from this schedule absent
8 prior written approval by the board or its designee. Failure to pay costs by the
9 deadline(s) as directed shall be considered a violation of probation.

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

13 a. On January 5, 2016, Respondent was informed of her requirement to
14 reimburse the board for the cost of investigation and prosecution in the amount of \$2,166.75 in a
15 payment plan of \$90.00 per month for 23 months, with a final payment of \$96.75, beginning
16 January 10, 2016, in accordance with Term 7 of the terms and conditions of probation.

17 b. On February 1, 2016, the Board sent Respondent a non-compliance
18 letter advising her that she failed to pay cost recovery as scheduled.

19 c. To date, no payments towards reimbursement of the cost of investigation
20 and prosecution have been received.

21 **FIFTH CAUSE TO REVOKE PROBATION**

22 **(Status of License)**

23 15. Condition 8 of Respondent's probation, states:

24 Petitioner shall, at all times while on probation, maintain an active, current
25 pharmacist license with the board, including any period during which suspension
26 or probation is tolled. Failure to maintain an active, current license shall be
27 considered a violation of probation.

28 If petitioner's pharmacist 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
petitioner's license shall be subject to all terms and conditions of this probation
not previously satisfied.

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b. On August 20, 2015, the Board received an electronic mail from Respondent acknowledging receipt of attendance cards and stating that she was planning to attend an addiction support group offered by Kaiser.

c. On October 16, 2015, Respondent submitted her quarterly report for 3rd quarter of 2015, without recovery support group attendance cards, in violation of Condition 12.

d. On February 1, 2016, the Board sent Respondent a non-compliance letter advising her that she failed to provide proof of attendance in a substance abuse recovery relapse prevention group.

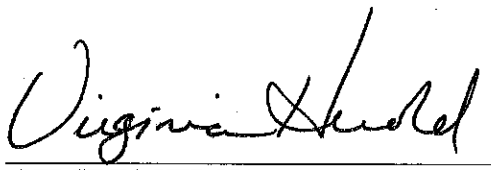
c. To date, no proof of attendance in a substance recovery relapse prevention group has been received.

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. 5482 and imposing the disciplinary order that was stayed thereby revoking Pharmacy Technician Registration No. TCH 43949 issued to Jennifer Jean Ortiz;
2. Revoking or suspending Pharmacy Technician Registration No. TCH 43949, issued to Jennifer Jean Ortiz; and
3. Taking such other and further action as deemed necessary and proper.

DATED: 7/19/16



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. 5482

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

In the Matter of Petition for
Reinstatement of Revoked License by:

JENNIFER ORTIZ,
a.k.a. Jennifer York,

Petitioner.

Case No. 5482

OAH No. 2015050440

DECISION

This matter was heard before a quorum of the Board of Pharmacy, State of California, in Irvine, California, on June 3, 2015.

Administrative Law Judge Adam L. Berg, Office of Administrative Hearings, State of California, presided over the hearing.

Supervising Deputy Attorney General Joshua Room represented the Office of the Attorney General, State of California, as authorized by Government Code section 11522.

Petitioner, Jennifer Ortiz, represented herself.

Petitioner's testimony, petitioner's statement in support of the petition for reinstatement, documents, and the arguments and observations of the Deputy Attorney General were presented in open session. Board members were invited to, and did, ask questions they deemed necessary to help with their deliberations. Additionally, board members had the opportunity to read and consider petitioner's petition and the exhibits attached to the petition. At the conclusion of the open hearing on the petition, the board met in closed session to deliberate and to vote on whether to approve petitioner's petition.

The matter was submitted on June 3, 2015.

FACTUAL FINDINGS

1. On August 27, 2002, the board issued Pharmacy Technician License No. TCH 43949 to petitioner.

2. On June 27, 2008, the executive officer filed an accusation against petitioner's license alleging four causes for discipline arising out of petitioner's conduct of, and subsequent conviction for, creating and filling fictitious prescriptions under fictitious names at the pharmacy where she was employed in order to obtain and self-administer Hydrocodone, a dangerous drug within the meaning of Business and Professions Code section 4022, and a controlled substance under Health and Safety Code section 11056, subdivision (e)(4). The accusation was served by certified mail to petitioner's last address provided to the board, and the post office returned it unserved. On November 3, 2008, the board issued a default decision and order revoking petitioner's license effective November 3, 2008.

In the default decision, the board determined the reasonable costs of investigation and enforcement were \$4,333.50.

3. On May 20, 2014, petitioner signed and submitted to the board a petition for reinstatement.

4. Petitioner testified about her recovery, her commitment to sobriety, and her goals for the future. Petitioner admitted that she had been addicted to pain killers and accepted full responsibility for her conduct that led to her conviction and license discipline. She has been sober since June 2006. She now enjoys a strong support system including her family and a therapist. She works as an admitting clerk in the emergency department of Children's Hospital of Orange County and plans to work in the hospital's pharmacy if her license is restored.

5. Petitioner testified that she would comply with all terms of a probationary license, and that she would reimburse the board the cost of investigation and enforcement if her license were reinstated.

6. Petitioner complied with all of the terms of her criminal probation, and her conviction was dismissed pursuant to Penal Code section 1203.4.

7. Petitioner submitted four letters of recommendation in support of her petition for reinstatement.

8. The Attorney General's Office made no recommendation to the board concerning the petition.

LEGAL CONCLUSIONS

1. In a proceeding for the restoration of a revoked license, the burden at all times rests on petitioner to prove that she has rehabilitated herself and that she is entitled to have her license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) A person seeking reinstatement of a revoked license must present strong proof of rehabilitation, and the showing must be sufficient to overcome the former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

2. Petitioner presented clear and convincing evidence that she has been rehabilitated to such an extent that it would not be adverse to the public health, safety and welfare to reinstate her license on a probationary basis. Because of petitioner's drug-related conduct, petitioner will be required to abstain from alcohol and drug use and regularly attend a substance abuse recovery support group.

3. Petitioner has not worked as a pharmacy technician for almost ten years. For this reason, as a condition precedent to the reinstatement of her license, petitioner must obtain certification from the Pharmacy Technician Certification Board as defined in Business and Professions Code section 4202, subdivision (a)(4).

4. Petitioner has agreed to reimburse the board costs of enforcement and investigation as a condition of probation. Due to the economic hardship petitioner would endure if required to pay the full costs of investigation and prosecution, the costs petitioner will be required to pay are reduced by half to \$2,166.75.

ORDER

I. Jennifer Ortiz's petition for reinstatement is granted on the following condition precedent:

Petitioner shall obtain certification from the Pharmacy Technician Certification Board and file satisfactory proof of such certification within one year of the effective date of this decision, unless the board or its designee, in its sole discretion, grants petitioner an extension of time in which to complete the certification process or an extension of time to file proof of certification.

II. Upon petitioner's completion of the condition precedent set forth above, Pharmacy Technician License No. TCH 43949 shall be reinstated. Upon reinstatement, the license shall be immediately revoked; the order of revocation stayed; and petitioner shall be placed on probation for a period of three years under the following terms and conditions:

1. Obey All Laws

Petitioner shall obey all state and federal laws and regulations.

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

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

2. Report to the Board

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

3. Interview with the Board

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

4. Cooperate with Board Staff

Petitioner shall cooperate with the board's inspection program and with the board's monitoring and investigation of petitioner's compliance with the terms and conditions of her probation. Failure to cooperate shall be considered a violation of probation.

5. Notice to Employers

During the period of probation, petitioner shall notify all present and prospective employers of the board's decision in Case Number 5482 and of the terms, conditions and restrictions imposed on petitioner by the decision, as follows:

Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment, petitioner shall cause her direct supervisor, pharmacist-in-charge (including each new pharmacist-in-charge employed during petitioner's tenure of employment) and owner to report to the board in writing acknowledging that the listed individual(s) has/have read the decision in Case Number 5482 and the terms and conditions imposed thereby and set forth herein. It shall be petitioner's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgement(s) to the board.

If petitioner works for or is employed by or through a pharmacy employment service, petitioner must notify her direct supervisor, pharmacist-in-charge and owner at every pharmacy of the terms and conditions of the board's decision in Case Number 5482 in advance of the petitioner commencing work at each pharmacy. A record of this notification must be provided to the board upon request.

Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen (15) days of petitioner undertaking any new employment by or through a pharmacy employment service, petitioner shall cause her direct supervisor with the pharmacy employment service to report to the board in writing acknowledging that he or she has read the board's decision in Case Number 5482 and the terms and conditions imposed thereby and set forth herein. It shall be petitioner's responsibility to ensure that her employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

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

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

6. Probation Monitoring Costs

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

7. Reimbursement of Board Costs

As a condition precedent to successful completion of probation, petitioner shall pay to the board its costs of investigation and prosecution in the amount of \$2,166.75. Petitioner shall make said payments according to a payment schedule established by the board. There shall be no deviation from this schedule absent prior written approval by the board or its designee. Failure to pay costs by the deadline(s) as directed shall be considered a violation of probation.

8. Status of License

Petitioner 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 petitioner'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 petitioner'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 petitioner cease work due to retirement or health, or be otherwise unable to satisfy the terms and conditions of probation, petitioner may tender her 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, petitioner 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 petitioner's license history with the board.

Upon acceptance of the surrender, petitioner shall relinquish her pharmacy technician license to the board within ten (10) days of notification by the board that the surrender is accepted. Petitioner may not reapply for any license, permit, or registration from the board for three (3) years from the effective date of the surrender. Petitioner 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

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

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

11. Tolling of Probation

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

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

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

"Cessation of work" means calendar month during which petitioner is not working for at least twenty (20) hours per week for each calendar month as a pharmacy technician, as defined in Business and Professions Code section 4115. "Resumption of work" means any calendar month during which petitioner is working as a pharmacy technician for at least twenty (20) hours per week each calendar month as a pharmacy technician as defined by Business and Professions Code section 4115.

12. Attend Substance Abuse Recovery Relapse Prevention and Support Groups

Within thirty (30) days of the effective date of this decision, petitioner shall begin regular attendance at a recognized and established substance abuse recovery support group in California, (e.g., Alcoholics Anonymous, Narcotics Anonymous, etc.) which has been approved by the board or its designee. Petitioner must attend at least one group meeting per week unless otherwise directed by the board or its designee. Petitioner shall continue regular attendance and submit signed and dated documentation confirming attendance with each quarterly report for the duration of probation.

13. Abstain from Drugs and Alcohol Use

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

14. Violation of Probation

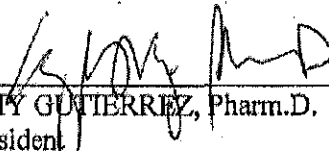
If petitioner has not complied with any term or condition of probation, the board shall have continuing jurisdiction over petitioner, and probation shall automatically be extended, until all terms and conditions have been satisfied or the board has taken other action as deemed appropriate to treat the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

If petitioner violates probation in any respect, the board, after giving petitioner notice and an opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. Notice and opportunity to be heard are not required for those provisions stating that a violation thereof may lead to automatic termination of the stay and/or revocation of the license. If a petition to revoke probation or an accusation is filed against petitioner 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.

15. Completion of Probation

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

Dated: JUL 22 2015



AMY GUTIERREZ, Pharm.D.
President
Board of Pharmacy
Department of Consumer Affairs